



DECISION

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

FILE: B-196180

DATE: December 10, 1979

MATTER OF: Bernhard E. Richert, Jr. - [Detail to
Higher-Graded Position]

DIGEST: Although GS-13 employee's temporary promotion to GS-14 because of improper detail to GS-15 was terminated February 17, 1979, he is entitled to backpay at GS-14 level from February 17 through May 6, 1979, since evidence indicates he continued to perform GS-14 duties until May 7, 1979. Employee is not entitled to backpay at GS-15 level since the higher-grade position was reclassified to GS-14/15 before employee was eligible for promotion to GS-15 and agency had discretion to appoint employee at GS-14.

This decision is in response to an appeal by Mr. Bernhard E. Richert, Jr., an employee of the Economic Development Administration, Department of Commerce, from a part of the determination of our Claims Division on May 22, 1979, concerning his claim for backpay incident to his detail from a GS-13 position to a GS-15 position. The determination was made in accordance with our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 id. 427 (1977), which hold that employees are entitled to temporary promotions and backpay for details in excess of 120 days to higher-level positions without prior approval of the Civil Service Commission, provided they meet certain requirements. Mr. Richert does not dispute that part of the determination granting him a retroactive promotion to GS-14 and backpay; however, he states the termination date is incorrect and that he is entitled to an additional temporary promotion to GS-15.

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The record shows that Mr. Richert was classified as a GS-13 and detailed to the position of Acting Chief, Program Development Division. That position was officially classified as a GS-15 position. Mr. Richert's detail began on November 1, 1977; therefore, he was entitled to a temporary promotion and backpay at the GS-14 level commencing 121 days after that date on March 1, 1978. Turner-Caldwell, supra; Robert Rann, B-191768, October 2, 1978. The latter decision held that a GS-12 employee

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detailed to a GS-14 position was entitled to a GS-13 temporary promotion effective on the 121st day of the detail and a temporary promotion to GS-14 1 year later.

We have been informally advised by the Department of Commerce's Office of Personnel that, based upon the Claims Division's determination, Mr. Richert's claim for temporary promotion and backpay to the GS-14 level was approved to February 17, 1979. The Department determined that this was the approximate date that Mr. Richert was reassigned to a GS-13 position and the date that an agency reorganization took place. However, Mr. Richert says that, despite the formal reassignment, he continued to perform the higher-grade duties until May 7, 1979. Thus, he contends that he is entitled to backpay at the GS-14 level through March 1, 1979, and at the GS-15 level thereafter through May 6, 1979. He bases his contention on Robert Rann, supra.

In support of his contention Mr. Richert has furnished us his supervisor's statement to the effect that he served as Acting Chief of the Program Development Division from November 1, 1977, to May 7, 1979. The statement, dated June 20, 1979, reads in pertinent part, as follows:

"Mr. Richert served as Acting Chief of the Program Development Division of the Office of Development Organizations from November 1, 1977 to May 7, 1979 when EDA's Reorganization of Policy and Planning became effective de facto. (While the Policy and Planning Reorganization was to become effective on February 18, 1979, it did not become operational until the offices were physically moved.)

"In the eleven week interval EDA's planning activities were in a state of limbo. I continued to administer on a de facto basis both the A-95 program and professional services activities which occupied Mr. Richert's full time as Acting Chief of the Program Development Division."

The issues in this case are whether Mr. Richert's detail continued through May 6, 1979, as alleged, and whether he is entitled to a temporary promotion and backpay at the GS-15 level beginning 1 year after his temporary promotion to GS-14.

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The record supports Mr. Richert's contention that he continued to perform the duties of Acting Chief, Program Development Division, until May 7, 1979. Thus, he is entitled to higher level pay until that date. However, for the reasons stated below, he is not entitled to a temporary promotion and backpay at the GS-15 level.

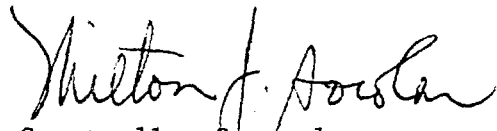
Mr. Richert's supervisor, Mr. Thomas S. Francis, was the Director, Office of Development Organizations, of which the Program Development Division was a part. Thus, he was in a position to evaluate Mr. Richert's duties, and he has furnished a signed statement to the effect that Mr. Richert performed the duties of Acting Chief from November 1, 1977, to May 7, 1979, when a Department reorganization came into effect. An earlier statement by Mr. Francis attesting to Mr. Richert's detail, dated January 22, 1979, is also part of the record. There is some conflicting evidence in the record. Mr. Richert was reassigned from the position of "Program Specialist, GS-13," to the position of "Economic Development Program Specialist, GS-13," by a Notification of Personnel Action dated February 16, 1979. Also, Mr. William Mullany was appointed Acting Chief of the Program Development Division by the Deputy Assistant Secretary for Economic Development Policy and Planning for a 30-day period beginning February 26, 1979. However, there is nothing in the record that indicates that Mr. Richert's reassignment was, at that date, anything more than a paper transfer and that he discontinued his previous duties. There is also no evidence in the record that Mr. Mullany ever assumed the duties of Acting Chief. Moreover, Mr. Mullany was also under Mr. Francis' supervision as a Deputy Director, and Mr. Francis has stated that Mr. Richert performed the duties. Thus, we will accept Mr. Francis' statement in support of Mr. Richert's contention that he performed the duties of Acting Chief until May 7, 1979.

Federal Personnel Manual Supplement, section 300.602(a), provides that an agency may advance an employee to a position at GS-12 or above only after he has served 1 year at the next lower grade. As previously stated, Mr. Richert was entitled to a temporary promotion to GS-14 on March 1, 1978. Thus, he was not eligible for a temporary promotion to GS-15 until March 1, 1979. However, before that date a Vacancy Announcement was issued by

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the Department for the position of Chief, Program Development Division. The announcement has an issue date of February 26, 1979, and shows a classification of GS-14/15. Thus, the position was reclassified and it was discretionary with the Department to fill the position at a GS-14 or GS-15 level. In this connection we have held that when an employee has been detailed to a position which has been classified downward, he is not entitled to higher pay until the position has been reclassified and reestablished at its earlier higher grade. Helen Mansfield, B-192765, May 9, 1979; Katherine Crump-Wiesner, B-190335, February 14, 1978; James C. Payne, B-191801, October 20, 1978. Since the position was reclassified prior to Mr. Richert's eligibility date he, or any other appointee, would only be entitled to the GS-14 level pay if the Department, in its discretion, decided to fill the position at the lower grade. Also, since the position was reclassified prior to his eligibility date, our decision in Robert Rann, supra, would not be applicable here. Therefore, Mr. Richert is not entitled to a temporary promotion to GS-15.

Accordingly, Mr. Richert is entitled to retroactive temporary promotion and backpay at the GS-14 level for an additional period from February 17 through May 6, 1979.



For the Comptroller General
of the United States