

**DECISION**



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

13750

PLM-11

Mr. Browne

FILE: B-196691

DATE: May 15, 1980

MATTER OF: Sherman D. Rachels, et al.

DIGEST: Where same duties were concurrently classified and filled at WG-11 and WG-13 pending action to properly establish those duties at the lower grade, grievance determination that WG-11 employees should be given retroactive temporary promotions with backpay may not be implemented. Backpay is not available as a remedy for classification inequities and because employees performed duties of their appointed WG-11 position, they were not detailed to higher grade WG-13 positions so as to entitle them to retroactive temporary promotions under Turner-Caldwell decision.

By a letter dated October 12, 1979, Mr. T.M. Domin, a disbursing officer at the Naval Air Station, Pensacola, Florida, requests an advance decision on the propriety of retroactive temporary promotions and backpay for Mr. Sherman D. Rachels and other employees of the Naval Air Rework Facility (NARF).

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The record shows that on July 3, 1979, as a result of a grievance appeal, Mr. Rachels and 7 other NARF employees were awarded retroactive temporary promotions and backpay by the Commanding Officer, NARF. The grievance appeal determination stated in pertinent part:

" 3. I have reviewed the facts and circumstances of this grievance. The record reflects that you and the other WG-2663-11 mechanics in Shop 65101 have been performing essentially the same duties as the employees in Shop 65101 who are currently classified as WG-2650-13 mechanics. As you may know, the proper classification of the WG-2650-13 mechanic position has been

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a topic of discussion for many years. This issue was resolved by reference (b) which stated, in part, that the Navy's typical job description for those mechanics who were performing work concerned with the maintenance and repair of the electronic and electrical aspects of numerical control machine tools was properly graded as Industrial Electronic Control Mechanic WG-2663-11.

" 4. In consideration of the above, it is my finding that you and the other WG-2663-11 mechanics in Shop 65101 were improperly assigned from the time you began performing journeyman level work in Shop 65101 to the time reference (b) was received. Accordingly, it is my decision that you and the other grievants be retroactively temporarily promoted to positions of Electronic Integrated Systems Mechanics WG-2650-13 effective the dates you and the other grievants began performing journeyman level work in Shop 65101 not to exceed 30 April 1977."

The general rule in cases of this nature is that an employee of the Federal Government is entitled only to the salary of the position to which he is appointed, regardless of the duties he performs. United States v. Testan, 424 U.S. 392 (1976). The Supreme Court also held in Testan, supra, that neither the Classification Act, 5 U.S.C. § 5101 et seq., nor the Back Pay Act, 5 U.S.C. § 5596, creates a substantive right to backpay for a period of wrongful classification. This holding was codified by the Civil Service Reform Act of 1978, Pub. L. 95-454, Title VII, § 702, October 13, 1978, 92 Stat. 1216, which amended 5 U.S.C. § 5596(b)(2) to read as follows:

"This subsection does not apply to any reclassification action nor authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates."

The record indicates that throughout the period for which the Commanding Officer found they should be retroactively promoted, Mr. Rachels and the other employees were performing the duties of the WG-11 positions to which they were assigned. Earlier, the same duties had been classified and filled at the WG-13 level. Although the Navy determined that the position was properly classified at WG-11 and filled additional positions at that level, it deferred action to reduce the grades of those who already held positions at the WG-13 level. As a consequence, for the period for which backpay is recommended, the duties the eight individuals performed were concurrently classified at WG-11 and WG-13 levels. In this context, the Commanding Officer's determination that the claimants were improperly assigned to the WG-11 level is essentially a classification determination. As explained above, the remedy of backpay is not available in cases of misassignment or improper classification.

In our Turner-Caldwell decision, 56 Comp. Gen. 427 (1977), we held that under Civil Service Commission regulations then in effect, employees detailed to higher grade positions without Civil Service Commission approval are entitled to a retroactive promotion with backpay for the period beginning with the 121st day of the detail until the detail is terminated. The Commanding Officer's determination that the eight individuals were improperly assigned to the WG-11 level and should be retroactively temporarily promoted to the WG-13 positions does not amount to a finding that they were detailed to a higher grade position. A detail is defined at paragraph 4 of FPM Bulletin No. 300-40, May 25, 1977, as 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." Since the claimants continued to perform the duties of the WG-11 position to which they were assigned, they were not assigned to the duties of a different and higher grade position and, thus, were not detailed to the WG-13 position.

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For the reasons expressed above, the Commanding Officer's recommendation that the claimants be given retroactive temporary promotions with backpay to the WG-13 positions may not be implemented.

*Milton J. Fowler*

Acting Comptroller General  
of the United States