

DECISION



19218
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-198142

DATE: August 19, 1981

MATTER OF: Allan S. Danoff and Leo A. Sanchez -
Termination of temporary promotions

- DIGEST:**
1. Two employees were given temporary promotions not to exceed 1 year. During that period, the agency without prior notice to the employees terminated the temporary promotions as part of a major reorganization. They claim backpay because they were not notified of the termination until after it became effective and because they continued performing higher-level duties. Since temporary promotions may be terminated at any time in the agency's discretion, and the employees knew or should have known of the terminations, the claims of the two employees for backpay are denied.
 2. Two employees, whose temporary promotions were terminated by their agency, continued to perform higher-level duties after termination. They are not entitled to backpay under Turner-Caldwell decisions because period of detail after termination of temporary promotions did not exceed 120 days.

In this case we decide that two employees of the Equal Employment Opportunity Commission (EEOC) are not entitled to backpay after their temporary promotions were terminated without prior notice to them. The question was raised by EEOC's Budget and Finance Director who requested an advance decision on whether the backpay remedy recommended by a grievance examiner may be implemented.

Mr. Allen S. Danoff and Mr. Leo A. Sanchez were employed in the Baltimore District Office of the Equal Employment Opportunity Commission. On July 30, 1978, they both received temporary promotions, not to exceed one year, from Equal Opportunity Specialist, GS-12, to Supervisory Equal Opportunity Specialist, GS-13. By letters of July 19, 1978, both had been notified in advance that the promotions were temporary and that, when

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their services were no longer needed in that capacity, they would be returned to their former grade and salary. Each had signified his understanding of the conditions of the temporary promotion by signing the bottom of the letter.

As part of a reorganization of EEOC, both employees were notified on November 21, 1978, that, effective January 28, 1979, their positions would be abolished and they would be offered reassignment in the same grade (GS-12) and salary. Both accepted the position offer contained in the notice.

Without prior notice to either the Baltimore District Office or the two employees, the EEOC Headquarters executed personnel actions (SF 50) terminating the two temporary promotions effective January 27, 1979, and returning the employees to their permanent GS-12 positions. Although the GS-13 supervisory positions were abolished the same day as part of the reorganization, they were reconstituted under the new organization with identical duties. Since the Baltimore District Office had not been notified of the termination action, both Mr. Danoff and Mr. Sanchez continued to perform the duties of the GS-13 supervisory positions until May 5, 1979. On May 6, 1979, both of them received permanent promotions to GS-13. Both claim backpay for the difference between the GS-12 salary they received and the GS-13 salary they should have received for the period of January 28 to May 5.

A grievance examiner of the EEOC found that no written notice had been provided of the termination of of the temporary promotions. He construed the written reassignment notice of November 21, 1978, to relate only to the employees' permanent positions, and not to their temporary positions. He further found that Danoff and Sanchez were first informed verbally on or about March 19, 1979, that their temporary promotions had ended on January 27, 1979.

On the basis of the undisputed evidence that Danoff and Sanchez continued to perform all the duties of the GS-13 supervisory positions throughout the period in question, the grievance examiner concluded that, since the period in dispute was well beyond

60 days, they were entitled to backpay under our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), reaffirmed 56 Comp. Gen. 427 (1977). As an independent basis for relief, he found that the agency was guilty of administrative error in failing to properly terminate the temporary promotions. He, therefore, recommended to EEOC that the grievants be granted the relief sought.

It is well settled that temporary promotions may be ended at any time at the discretion of the agency. Neither adverse action procedures under Federal Personnel Manual (FPM) chapter 752 nor reduction-in-force procedures under FPM chapter 351 apply when a temporary promotion is ended within 2 years and the employee is returned to his regular position or placed with his consent in a different position at the same grade. FPM chapter 335, Section 4-4f, Installment 201, October 25, 1973.

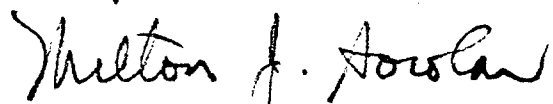
Normally, of course, notice is required before an employee may be reduced in grade or salary. 16 Comp. Gen. 979 (1937); 27 Comp. Gen. 176 (1947). We point out that the termination action was promptly sent to the payroll office and the two employees' pay was reduced from GS-13 to GS-12, effective January 27, 1979. Thus, when they received their next pay check, they knew or should have known that agency action had been taken concerning their temporary promotions and they were under a duty to inquire at that time. This is particularly so in view of the November 21, 1978, notice that their positions would be abolished effective January 28, 1979.

The agency's action in ending the two temporary promotions had the effect of transforming the temporary promotions into details to higher-grade positions effective January 28, 1979. The grievance examiner erred in finding that backpay was due because those details lasted more than 60 days. The Turner-Caldwell, supra, decisions clearly require higher-grade details to extend beyond 120 days before backpay is due. The 60-day provision in FPM chapter 335, Section 4-1e, relied upon by the grievance examiner, has not been construed to create an entitlement to backpay. Moreover, the period of a temporary promotion is not included in computing the length of a detail for purposes of our Turner-Caldwell remedy. 58 Comp. Gen. 401 (1979).

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As a final point, EEOC Headquarters has advised us that the grievants, since they continued to serve as supervisors, were not covered by a collective bargaining agreement provision limiting details to higher-grade positions to 60 days. The National Labor Management Agreement between EEOC and the American Federation of Government Employees (AFGE) excludes "supervisors" from the bargaining unit. We decline to consider that issue. Whether or not non-supervisory employees of EEOC who are detailed to supervisory positions are covered by the agreement during the detail period is a matter for resolution between EEOC management and the employee union. If Danoff and Sanchez were covered, and if the 60-day provision applies to details to supervisory positions, they would be entitled to a retroactive temporary promotion after serving as GS-13 supervisors 60 days following the end of their temporary promotions. See B-181173, November 13, 1974, and 57 Comp. Gen. 536 (1978).

Accordingly, the grievance examiner's recommendation of retroactive temporary promotions with backpay for Mr. Danoff and Mr. Sanchez may not be implemented.



Acting Comptroller General
of the United States