



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

B-177647

April 18, 1973

Mr. George R. Boss, Director
Labor Management Department
American Federation of Government Employees
1325 Massachusetts Avenue, N. W.
Washington, D. C. 20005

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Dear Mr. Boss:

We refer further to your letter of December 11, 1972, reference 4c/L-1178, transmittting a claim for Mrs. Kathleen H. Barnes, an employee of the Department of the Army, concerning the setting of her salary upon her reinstatement on August 7, 1963.

We have reviewed the material submitted with your letter, together with a report on the matter furnished at our request by the Department of the Army. It appears that Mrs. Barnes resigned from a position in the Department of the Army as Clerk-Typist, GS-3, step rate 8, on October 22, 1962, and she was reinstated August 7, 1963, to a position of Stock Control Clerk (Typing), GS-3, step rate 1. It is now contended by the claimant that she should have been reinstated under the "highest previous rate" rule at GS-3, step rate 8, and as a result she has been underpaid since that date.

The agency states that the determination as to rate was due to a shortage of funds which was consistent with agency pay fixing policy at the time due to an austerity program. The record indicates the reason for the rate determination was explained to Mrs. Barnes and reflected on the applicable personnel documents when she was reinstated.

It appears that during the latter part of 1966 the agency pay fixing policy was changed and at that time Mrs. Barnes' supervisor requested consideration be given as to whether she could be given a within-grade increase since Mrs. Barnes felt she had not been given the proper step when she was reinstated. Since Mrs. Barnes' previous high salary rate had been considered when she was reinstated and not granted as set forth above, the agency determined that no action was appropriate in light of the Department of the Army regulation CPR P3, paragraph 1-8, which provides:

[Reinstated Employee's Salary]

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A rate once established continues until a new personnel action takes place (par. 1-1) or until it is changed by step increase action, by application of a new schedule of rates, by termination of a salary retention period, or by application of advanced in-hiring rates or increased rates for hard-to-fill Classification Act positions. At the time a new personnel action is effected there must be a new determination as to the rate which should be established. Change action may not be effected solely for the purpose of affording an employee the benefit of a highest previous rate as defined in paragraph 1-4b. See 36 Comp. Gen. 798. (Underlining supplied.)

On July 22, 1972, Mrs. Barnes filed a claim with her agency in the amount of \$5,579.65 alleging discrimination in the matter of setting her pay rate upon reinstatement in 1963. Although the data submitted does not show the specific agency response to the claim of that date, the data does show various agency determinations in response to inquiries by Mrs. Barnes to the effect that no evidence exists to support a finding of discrimination in the matter, and that the applicable personnel actions were processed in accordance with the local pay fixing plan at the time.

While personnel actions relating to other employees during the same period have been cited as being at variance with the action taken in the claimant's case, the record does not establish that actions in either the claimant's case or the other employees' cases were not in accordance with existing policy and administrative regulations and directives.

At the time in question Department of the Army policy regarding the appointment of employees at rates above the minimum rate of the appropriate grade under the highest previous rate was contained in CPR P3.1. Under that policy the allowance of compensation at a higher within-grade rate on the basis of the highest previous rate rule was not a mandatory procedure although appointing officers were allowed to make use of the rule "when necessary to obtain desired services or when otherwise determined to be in the best interests of the Department of the Army." This was and is consistent with the Civil Service Regulations under which application of the highest previous rate rule

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is permissive. In Mrs. Barnes' case the administrative office exercised its discretion in placing her in the minimum step of GS-3, and advised her of the reason for so doing, as required by CFR P3.1. The discretion is reposed exclusively with the administrative office.

Since the rate of pay for Mrs. Barnes was fixed in accordance with the applicable agency regulation, there is no basis for our Office to allow the claim.

Sincerely yours,

Paul G. Deabling

For the Comptroller General
of the United States