



U.S. Department of Justice

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MEMORANDUM

August 1, 1994

TO: Merrick B. Garland  
Principal Deputy Associate Attorney General

FROM:  David M. Cohen  
Director, Commercial Litigation Branch

Re: Postal Service Reorganization Cases

Date: August 1, 1994

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This memorandum responds to your request for information concerning the Postal Service reorganization cases. These cases involve Postal Service employees who accepted or were assigned to positions with lower grade levels as a result of the Postal Service's recent restructuring, which affected approximately 30,000 workers. The employees received "indefinite saved grade" and "indefinite saved pay," pursuant to which they did not lose their grade, pay, benefits, or tenure as a result of being assigned to lower graded positions. They contend that, despite the agency's indefinite saved grade and pay policy, their assignments to lower graded positions constituted "demotions," as that term is defined by OPM's regulations, and that, because they were demoted, the Postal Service was required to and should have followed OPM's Reduction In Force ("RIF") procedures, which afford certain job retention and other procedural protections to veterans and others.

The Merit Systems Protection Board concluded that because the appellants had been assigned to positions with lower grade levels, they had been demoted, and, therefore, could appeal to the board. The board also held that the fact that two of the employees had voluntarily accepted offers of reassignment before being directed into new positions did not deprive the board of jurisdiction to entertain their appeals.

The Postal Service recommended filing petitions for review. We filed petitions for review (attached) on July 27, 1994, after receiving a letter from the Director of OPM stating that the MSPB's decisions were in error and would have a substantial impact upon the administration of the civil service law. See 5 U.S.C. § 7703(d).

In the petitions, we assert that the MSPB erred by not interpreting the RIF regulations in accordance with OPM's previously-published policy that employees assigned to new positions, but who do not lose their grade, pay, and tenure, may not appeal their reassignments to the MSPB. We further explain that the MSPB erred by failing to hold that it lacked jurisdiction to entertain the appeals of the employees who voluntarily accepted positions in order to avoid the consequences of the Postal Service's reorganization.

On July 29, 1994, we received a letter from the Director of OPM stating that he believes that "we should no longer contest the MSPB's conclusion that these unique personnel actions were demotions." According to the Director, "[t]o further contest this issue would be inconsistent with the Administration's commitment to veterans preference."

Given OPM's conclusion, it would be extremely difficult for us to continue to contend that the MSPB erred in failing to grant deference to OPM's interpretation of the term "demotion." Therefore, we have recommended that we withdraw the petitions for review.