BEFORE THE MERIT EMPLOYEE RELATIONS BOARD

IN THE MATTER OF JAMES RAMSEY Grievant, v. STATE OF DELAWARE DEPT. OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL (DNREC) Agency	**DOCKET NO. 95-03-12** **OPINION AND ORDER**

BEFORE Woo, Chairperson, Burns, Vice Chairperson, Bowers, Fullman and Green, Members, constituting a lawful quorum of the Board pursuant to 29 Del Code, Section 5908(a).

And now this 29th day of February, 1996, it appearing to the Board that:

This matter came before the Board on legal argument on May 11, 1995 and was followed by briefing on the issues. Subsequent to the May date additional submissions were accepted from each party and this matter came before the Board on October 25, 1995 for deliberations.

SUMMARY OF EVIDENCE

1. At all relevant times, Mr. Ramsey was employed by Department of Natural Resources and Environmental Control, and on May 2, 1988 held the position of Marine Police Officer IV (Budget Position 8068), Paygrade 11. On May 2, 1988, as a result of a DNREC reorganization and a state-wide maintenance review by the State Personnel Office, his position was reclassified to a position of Fish & Wildlife Agent II, Paygrade 10, and he was advised of the reclassification, change in pay grade and that the reclassification would not change his present salary.

2. At the same time period, the position of Game Warden (Budget Position 8021) was reclassified to Fish & Wildlife Agent III, Paygrade 12, and this position was vacant within

60 days of the reclassification. Mr. Ramsey did not apply for this position and was not placed in that open position by DNREC. Mr. Ramsey filed the grievance claiming a right of transfer to the vacant position pursuant to Merit Rule 3.0900.

THE LAW

29 Del. C. § 5931. Grievances.

"The rules shall provide for the establishment of a plan for resolving employee grievances and complaints. The final two (2) steps of any such plan shall provide for hearings before the Director or the Director's designee and before the Board, respectively, unless a particular grievance is specifically excluded or limited by the Merit Rules. The director and the Board, at their respective steps in the grievance procedure, shall have the authority to grant back pay, restore any position, benefits or rights denied, place employees in a position they were wrongfully denied, or otherwise make employees whole, under a misapplication of any provision of this chapter or the Merit Rules. The rules shall require that the Board take final action on a grievance within ninety (90) calendar days of submission to the Board. Upon approval of all parties, the ninety (90) days may be extended an additional thirty (30) calendar days. (29 Del. C. 1953, § 5931; 55 Del Laws, c. 443, §6, 69 Del. Laws, c. 436, §7.)" Effect of amendments -- 69 Del. Laws, c. 436, effective July 14, 1994, rewrote this section.

Merit Rule 3.0900 Status of Incumbent Upon Reclassification of Position

3.0910

When a position in the classified service is reclassified to another class, the incumbent shall be entitled to serve therein with permanent status provided the incumbent had such status in the former class and meets the minimum qualification requirements for the new class. In such a case, however, a written examination shall not be required.

3.0911

Should the incumbent not qualify for the position as reclassified, he/she shall be transferred to a vacant position for which qualified within the classified service. In the event extenuating circumstances exist, the appointing authority may request approval of the Director to retain the incumbent in the position for a reasonable period, in an underfill capacity, pending qualification at the higher level or pending a transfer.

3.0920

When a position in the classified service is reclassified to a class with a lower grade, the incumbent shall be entitled to transfer to a vacant position for which he/she qualified in the classified service and to serve therein without change in status. In the event that such transfer cannot be effected within sixty (60) calendar days, the rules related to pay under demotion shall apply.

3.0930

When a position is reclassified to a position in an Authorized Career Ladder, as defined in Merit Rule 3.0710, placement of the position incumbent in the Career Ladder is determined in accordance with promotion standards approved by the Director.

3.0940

Movement from one level to another within an Approved Career Ladder, as described in Merit Rule 3.0710, is considered a promotion, not a reclassification. Promotion along a Career Ladder is not subject to the provisions of Merit rules 3.0800 or 3.0900. Pay rate upon promotion through a Career Ladder is determined in accordance with Merit Rule 13.0111.

FINDINGS OF FACT

1. James Ramsey was a marine police officer in 1987 when his position was changed due to a department-wide reorganization in the Department of Natural Resources and Environmental Control.

2. Mr. Ramsey was placed in a position as a Fish and Wildlife Officer II, at Pay Grade 10 by the DNREC Personnel Department.

3. His original pay grade was Pay Grade 11 as a Marine Police Officer IV

4. His revised pay grade was Pay Grade 10, however, he suffered no loss of pay.

5. At the time of the move there was a vacant Pay Grade 12 position for a Fish and Wildlife Officer III.

6. Mr. Ramsey did not apply for that position and he was not placed in that position by the Department.

CONCLUSION OF LAW

The Board finds by a preponderance of the evidence that, although the circumstances indicate that individuals under his supervision when the reclassification took place were placed in higher positions, there was no discrimination by the failure to place Mr. Ramsey in the available position of Fish and Wildlife Officer III. The Board finds that there was no showing that he qualified for the position and, in the end, the Department exercised legitimate discretion in assigning the personnel to the vacant positions.

ORDER

The grievance is dismissed.

IT IS SO ORDERED

Katy K. Woo, Chairperson

Robert Burns, Vice Chairperson

Walter Bowers

Dallas Green

Gary Fullman

APPEAL RIGHTS

29 Del. C. § 5949 provides that the grievant shall have a right of appeal to the Superior Court on the question of whether the appointing authority acted in accordance with law. The burden of proof of any such appeal to the Superior Court is on the grievant. All appeal to the Superior Court are to be filed within thirty (30) days of the employee being notified of the final action of the Board.

Mailing Date: March 5, 1996

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