but would have us undo the determinations of the trial judge concerning, among other things, the deduction from the award of unemployment compensation received by plaintiff. She also challenges his denial of the addition of certain further annual leave, compensatory and holiday leave, travel expense reimbursements, life and health insurance benefits, and severance pay. She also seeks special consideration for income taxes. As to the issue of taxes, we decline to rule, as the issue is presented prematurely and would require a declaratory judgment which we have no jurisdiction to grant in this case.

The trial judge allowed plaintiff 3,326 hours of back annual and holiday leave at an hourly rate of $9.65 for a total of $32,095.90. Defendant challenges this part of the back pay award and concedes only 240 hours in accordance with the provisions of FPM Chapter 550, Subchapter 2–3a (1975). Since we believe defendant is correct, this would reduce the leave item to $2,316.00 and reduce the total recovery to $167,372.25. Defendant's position is based on the December 23, 1975, amendment of the Back Pay Act by Public Law 94–172, 89 Stat. 1025 (1975), 5 U.S.C. § 5596(b)(2) (1976), and implementing regulations, 5 C.F.R. § 550.804(g) (1977). *See also* FPM Supp. 990–2, Chapter 550, Subchapter 8, Subparts S8–2a, S8–6, and S8–6c (1977). Thereunder, an employee not on the rolls on the date of the amendment is limited in his claim for leave which must be made to the agency within 3 years from the 1975 amendment, and contemplates reinstatement to active duty employment. Plaintiff does not meet these criteria and although she responds to defendant she has failed to persuade us of the correctness of her position. At oral argument she admitted that she has not complied with the procedural requirements to claim leave but charges that this is because she is prohibited from talking to Government agencies and they are prohibited from talking to her. There is no proof of this and we reject it. Plaintiff concedes that her entitlement to the leave "would appear to depend upon the interpretation of her current status with respect to the phrase 'reinstated to the rolls,' " or as a "former employee." We have ruled on that, adversely to plaintiff, and reiterate it here. We further conclude and hold that plaintiff is not entitled to full credit for annual leave for

the period that she was not actually, as opposed to constructively, employed.

We have patiently read all of the papers before us and listened to the oral argument. We are satisfied that the trial judge, with the one exception pertaining to leave discussed above, is correct on the facts and the law. His opinion was furnished to the parties and is not printed herewith. We further conclude that we cannot and should not reverse the prior decisions of the court in this case.

IT IS THEREFORE ORDERED that the memorandum opinion of the trial judge, filed October 4, 1978, is adopted by the court, with the modification stated, as the basis for its judgment, and final judgment for plaintiff is entered in the sum of * one hundred eighty-two thousand three hundred sixty-six dollars and six cents ($182,366.06), of which, prior to payment, fourteen thousand nine hundred ninety-three dollars and eighty-one cents ($14,993.81) will be credited to plaintiff's Civil Service Retirement Fund account, representing plaintiff's contribution to the fund based on back pay awarded plaintiff for the period June 13, 1959, to January 26, 1977. The judgment payable to plaintiff after said deduction, therefore, is $167,372.25, as stated in the order of the court of June 22, 1979.

IT IS FURTHER ORDERED that plaintiff's motion of November 2, 1978, for an order directing defendant to cancel her resignation from defendant's employment, effective June 12, 1959, is hereby denied.**

No. 41–78. JUNE 22, 1979

Robert J. Pittman

Civilian pay; assignment to higher position; Central Intelligence Agency; exemption from Classification Act; authority to formulate own compensation regulations.—On June 22, 1979 the court entered the following order:

Robert J. Pittman, pro se.

Arlene Fine, with whom was *Assistant Attorney General Barbara Allen Babcock,* for defendant.

* The amount of the judgment set forth in the order of June 22, 1979 was corrected by the order of June 29, 1979 as set forth above. The court stated that "In all other respects the order of June 22, 1979, stands."

** Plaintiff's motion for rehearing of order and defendant's motion for new trial, rehearing and suggestion for rehearing *en banc* were denied September 28, 1979. Plaintiff's petition for a writ of certiorari was denied, 445 U.S. 969 (1980).

Before KUNZIG, *Judge*, Presiding, COWEN, *Senior Judge*, and SMITH, *Judge*.

This *pro se* civilian pay case comes before the court on the parties' cross-motions for summary judgment. Plaintiff contends that the Central Intelligence Agency (CIA or Agency), although exempt from the provisions of the Classification Act (the Act), 5 U.S.C. § 5101, *et seq.* (Supp. II, 1965–66), nonetheless has adopted a policy of wholesale adherence to the Act, and is bound by its provisions. Plaintiff alleges he was employed by the CIA and the Agency failed properly to compensate him under the Classification Act. The Government counters that although the Agency does have some provisions in common with the Act, the Agency has wide discretion to formulate its own pay policies irrespective of the Act. We hold for the Government.

Plaintiff was a career staff employee of the CIA from 1950 until his retirement in August 1978. In February 1971, plaintiff was promoted to a GS–15 level within the Agency. Thereafter, on June 18, 1973, while still being paid at a GS–15 rate, plaintiff was transferred to another position within the Agency which was graded at a GS–16 level. General CIA policy with regard to assignments, as stated in applicable regulations, is that the "paramount consideration . . . will be the needs of the Agency" and that individual and personal circumstances "must be subordinated to Agency requirements." Plaintiff's assignment was taken pursuant to CIA regulation HR 20–17d which provides for assignments to positions of higher grade for training purposes or when the employee is the best qualified available person at the time for the position. Plaintiff continued to perform the duties of his new position while at all times receiving compensation commensurate with a GS–15 salary.

In April 1977, plaintiff submitted a claim to the CIA in the amount of approximately $10,000, such sum representing the additional salary he would have received had he been compensated at a GS–16 rate since June 18, 1973. Plaintiff's claim was denied by the Director of the Agency on August 8, 1977. Thereafter, on February 1, 1978, plaintiff timely brought suit in this court.

Plaintiff contends that as the incumbent of a GS–16 position, he is entitled by the official policies, regulations

and directives of the CIA to be paid at a GS–16 salary rate from June 18, 1973 until August 25, 1978. Although the CIA is specifically exempt from the provisions of the Classification Act, *see* 5 U.S.C. § 5102(a)(1)(vi), plaintiff argues to the extent the Agency has adopted provisions of the Classification Act, the Agency is bound to comply with such provisions.

Principal reliance is placed by plaintiff on two directives issued by the Director of the Agency. The first, issued in 1949, stated in part that the Agency would be "governed by the basic philosophy and principles of the Classification Act . . ." The second, issued in 1962, reaffirmed the earlier directive stating in part that "the agency, *insofar as practicable*, will adhere to the compensation schedules and other provisions of the Classification Act of 1949 . . . for all staff personnel of the Agency except as may be otherwise authorized by the Director of Central Intelligence." (emphasis added). These directives, plaintiff contends, indicate that the Agency has, in effect, adopted the provisions of the Classification Act in regard to compensation schedules and is bound by such provisions. We disagree.

Although the Agency has in some instances adopted personnel policies similar to those contained in the Classification Act, there are also numerous differences.[1] We do not believe the impact of the two directives discussed above was—as plaintiff suggests—to effect a wholesale adoption of Classification Act practices. Rather it merely indicated the desire of the Agency to emulate the basic principles of the Act, while at the same time, retaining the right to formulate its own personnel policies consistent with the unique needs of the CIA.

Plaintiff's transfer to his new position on June 18, 1973 was made pursuant to CIA regulation HR 20–17d. As discussed *supra*, the regulation provides that an employee may occupy a position of a grade higher than his grade when:

> (1) for training purposes the assignment is intended to afford the employee broader developmental opportunities in his career field; or (2) the employee is the best qualified person available at that time for the position.

[1] As examples, the overtime rules, performance evaluation system, management of supergrades, and procedures for involuntary separations are all different.

Although the Agency has a general policy of assigning employees to a position at the employee's grade, HR 20–17d is a specific exception to such policy. Thus, from the plain language of the quoted regulation itself, it is clear that the assignment of plaintiff to a position that was higher than plaintiff's grade without a salary or promotion increase was authorized under CIA regulations.[2] Insofar as the CIA is, by virtue of the exigencies of its special functions, exempt from the Classification Act, these regulations are permissible under existing law.

Plaintiff's case is similar, as the Government urges, to our decision in *Peters* v. *United States*, 208 Ct.Cl. 373, 534 F. 2d 232 (1975). Since plaintiff has failed to show any specific entitlement to the higher pay of a GS–16 from any specific statute or regulation, his claim must fail. "For the court to order a promotion where the agency has failed to do so there must be a clear legal entitlement to such promotion." *Peters, supra* at 377; *Selman v. United States*, 204 Ct.Cl. 675, 686, 498 F. 2d 1354, 1359 (1974).

As a final observation, we note that over the course of plaintiff's service with the CIA he has at times been assigned to positions of a lower grade than that indicated by the pay he was receiving. Plaintiff, although at all times having access to all pertinent CIA personnel regulations, never complained when he benefitted and should not now be heard to complain when the situation is reversed. *See, e.g., Peters, supra; Steur* v. *United States*, 207 Ct.Cl. 282 (1975); *Weir* v. *United States*, 200 Ct.Cl. 501, 474 F. 2d 617, *cert. denied*, 414 U.S. 1066 (1973).

In conclusion, we hold that plaintiff has failed to convince the court that the CIA has abdicated its discretionary authority to establish its own rules and regulations in regard to compensation of its employees in favor of those outlined in the Classification Act. The CIA, because of its unique and specialized functions, was granted by Congress the authority to formulate its own personnel policies consistent with those unique needs of the Agency. We, therefore, are compelled to hold and do so hold that the CIA's personnel practices, about which plaintiff complains, are valid exercises of the Agency's power.

Accordingly, IT IS THEREFORE ORDERED, upon careful consideration of all original and supplemental submissions of the parties, with oral argument, that plaintiff's motion for summary judgment is denied. Defendant's motion for summary judgment is granted, and the petition is dismissed.

[2] Plaintiff contends that CIA regulations necessitate documentation where, as here, an employee is "detailed" to a position outside of his career service *or* to temporary work for 30 days or more in development complement status. However, plaintiff's transfer constituted an "assignment" under Agency regulations, not a "detail." Plaintiff was a career administrative officer and his assignment was made to another administrative position. Therefore, since plaintiff was assigned to a position within his career service, i.e., Administrative Career Service, no documentation under CIA regulations was necessary beyond the personnel action.

No. 246–78. JUNE 22, 1979

Joyce Y. Neenos

Civilian pay; dismissal; excepted employee.—On June 22, 1979 the court entered the following order:

Joyce Y. Neenos, pro se.

Gerald L. Schrader, with whom was *Assistant Attorney General Barbara Allen Babcock*, for defendant.

Before DAVIS, *Judge*, Presiding, KASHIWA, and KUNZIG, *Judges*.

In this civilian pay case *pro se* plaintiff alleges that she was wrongfully discharged from her position as a clerk-typist with the Department of the Army. The case is before the court on cross-motions for summary judgment. We conclude that there are no disputed issues of material fact and award judgment to the defendant.

Since 1972 plaintiff has worked in several positions in the federal civil service. During 1973 plaintiff held the position of clerk-typist with the Department of the Army in Fort Ord, California. Her appointment was in the career-conditional category. She completed her one-year probationary period in April of 1974.

Sometime in late 1975 or early 1976, plaintiff traveled with her soldier-husband on his overseas tour of duty in Germany. Plaintiff alleges that she was on a leave of absence from her clerk-typist position. On February 12, 1976, plaintiff was employed by the Army as a clerk