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DECISION



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

FILE: B-178783.192 DATE: DEC 21 1976
MATTER OF: Relocation Expenses--Ferdinando D'Alauro

DIGEST: Employee transferred from Miami, Florida, to Fort Pierce, Florida, and then to West Palm Beach, Florida, claims relocation expenses on basis that first transfer was under agency's merit promotion program, which automatically authorizes relocation expenses, and that second transfer was for efficiency of Government. However, position at Fort Pierce was lateral transfer to position with no greater promotion potential than former position and thus exception to merit promotion plan under civil service and agency regulations. Agency determined that both transfers were for employee's convenience. Such administrative determinations are binding on this Office.

This action results from the denial by the U. S. Customs Service of Mr. Ferdinando D'Alauro's claim for relocation expenses incident to his transfers from Miami, Florida, to Fort Pierce, Florida, and from there to West Palm Beach, Florida, under the following circumstances.

Mr. D'Alauro, a Customs Service employee stationed at Miami, Florida, states that he applied for a position with a duty location in West Palm Beach, Florida, under Merit Promotion Vacancy Announcement No. IV-134, dated February 1, 1974. On February 22, 1974, he was verbally notified of his selection for a position in Fort Pierce, Florida, and was told to report there on February 25, 1974. Mr. D'Alauro received an SF-50 dated February 27, 1974, which reassigned him effective March 3, 1974. That form stated "Reassignment at employee's own request and at no expense to the Government." The record shows that Mr. D'Alauro was "somewhat disillusioned" that he would bear the expenses of the transfer, and that he requested that he be returned to Miami.

Accordingly, Mr. D'Alauro was subsequently detailed to Miami from Fort Pierce, effective April 15, 1974, and was then transferred from Fort Pierce to West Palm Beach on August 18, 1974. With

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regard to the final transfer, Mr. D'Alauro states that the transfer was not at his request, nor was the detail to Miami at his request.

Mr. D'Alauro contends that the transfer to Fort Pierce was under the Merit Promotion Plan, which would automatically entitle him to relocation expenses incident to Customs Service policy, and that the second transfer to West Palm Beach was for the convenience of the Service.

In a report dated August 11, 1976, on the matter of Mr. D'Alauro's transfers, a copy of which was furnished our Office, the Customs Service stated that:

"Mr. D'Alauro was denied travel and transportation allowances for his transfer from Miami, Florida, to Fort Pierce, Florida, and from Fort Pierce, Florida, to West Palm Beach, Florida, by the Regional Commissioner in accordance with the provisions of the Federal Travel Regulations and the Customs Accounting Manual. Contrary to Mr. D'Alauro's claim, he was selected for the position in Fort Pierce, Florida, as an exception to the Merit Promotion Plan, and not under the Merit Promotion Plan because his selection was a lateral transfer, and, further, the Fort Pierce position was not advertised under either Vacancy Announcement IV 134, dated February 1, 1974, or IV 135, dated February 1, 1974, as he claims, nor has it since been advertised under the Plan. These announcements are for West Palm Beach, Florida, and Fort Lauderdale, Florida, only. Chapter 2, Part 1.2 Federal Travel Regulations provides that '...travel and transportation expenses and applicable allowances as provided herein are payable in case of (a) transfer of an employee from one official station to another for permanent duty, provided that: the transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee or at his request...'. "

"Section 190.20(a)(1) Customs Accounting Manual provides that employees shall be eligible for travel

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and transportation allowance. . . . Whenever the transfer is made under the Merit Promotion Plan or is specifically determined by an Assistant Commissioner or a Principal Field Officer as necessary to improve the efficiency of the Customs Service. Such expenses, however, shall not be allowed when the transfer is made primarily at the request of the employee for his convenience and benefit. . . .

"A specific determination was made in accordance with the foregoing provisions that Mr. D'Alauro was not entitled to travel and transportation allowances because the transfer was primarily for his benefit and at his request."

Whether a particular transfer is in the interest of the Government or for the convenience or benefit of the employee is a determination for which the agency has primary responsibility. B-285077, May 27, 1976; B-184251, July 30, 1975. In our decision, B-185077, supra, we set forth three rules with regard to such determinations:

"(1) If an employee has taken the initiative in obtaining a transfer to a position in another location, an agency usually considers such transfer as being made for the convenience of the employee or at his request, (2) whereas, if the agency recruits or requests an employee to transfer to a different location it will regard such transfer as being in the interest of the Government. (3) Of course, if an agency orders the transfer and the employee has no discretion in the matter, the employee is entitled to reimbursement of moving expenses."

The Customs Service, as a matter of policy, authorizes relocation expenses for employees who are transferred under their Merit Promotion Plan. We believe that such policy is mandated by the second rule quoted above. For entitlement to relocation expenses incident to transfers not under that Plan, the Customs Service requires a determination be made that the transfer is necessary to improve the efficiency of the service. See Customs Accounting Manual 190.20(a)(1). Presumably, the three rules quoted above are given consideration in making such determinations.

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With regard to the first transfer, from Miami to Fort Pierce, the controversy centers around whether Mr. D'Alauro's transfer was under the Merit Promotion Plan, as he alleges, which would create automatic entitlement to relocation expenses. As quoted above, the Customs Service states that his promotion was an exception to the Plan. We have been informally advised that the basis for this statement is that the position to which Mr. D'Alauro was reassigned at Fort Pierce was at the same grade as his former position and did not contain any greater promotion potential than his former position.

The relevant Civil Service regulations providing for merit promotion programs are found at chapter 335, Federal Personnel Manual. Specifically, subchapter 2-1(b) states in part that:

"The competitive procedures of the plans need not apply to:

* * * * *

"(2) A position change within the same agency from a position having known promotion potential to a position having no higher potential."

Additionally, chapter 335, Customs Personnel Manual, which contains the Customs Service regulations relating to their Merit Promotion Plan, provides at section 1-8d that:

"* * * there is no requirement that applications for re-assignment not involving promotion opportunity be considered under 'his provision.'" (Emphasis added.)

Thus, since Mr. D'Alauro's reassignment to the position at Fort Pierce was a lateral transfer to a position with no greater promotion potential than his former position, such reassignment was considered by the Customs Service as being outside of the Merit Promotion Plan. Hence, such Plan cannot be the basis for automatic entitlement to relocation expenses incident to that transfer. Rather, the Customs Service views Mr. D'Alauro's transfer as essentially being at his own request. The determination required by Customs Accounting Manual 190.20(a)(1) as to whether the transfer was

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necessary to improve the efficiency of the service was, therefore, made in the negative. An administrative determination made by an agency in the course of performing its official functions will not be overturned by this Office, in the absence of a showing that such determination was arbitrary or capricious. B-166930, July 22, 1969. On the basis of the record before us this Office is bound by the Customs Service's determination that Mr. D'Alauro's transfer from Miami to Fort Pierce was for his convenience and benefit.

With regard to the August 18, 1974, transfer from Fort Pierce to West Palm Beach the question presented is whether such transfer was at Mr. D'Alauro's request, as the Customs Service argues, or for the convenience of the Customs Service as Mr. D'Alauro states. The question presented is essentially a factual one. If, as Mr. D'Alauro states, the Customs Service ordered him to West Palm Beach, without his request, entitlement would follow. See the third rule in B-185077, supra, quoted above.

The SF 50 dated August 19, 1974, transferring Mr. D'Alauro from Fort Pierce to West Palm Beach states: "Reassignment at the employee's own request." Furthermore, the administrative report submitted by Customs Service states that the transfer to West Palm Beach followed Mr. D'Alauro's expression of dissatisfaction with his transfer to Fort Pierce, and, thus, was for his benefit. Mr. D'Alauro submits no substantive evidence to overcome the SF 50 or the administrative report submitted by the Customs Service. Accordingly, this Office is bound by the administrative finding of fact. See B-184002, November 4, 1976, and B-184608, May 4, 1976.

Thus, the denial by the Customs Service of Mr. D'Alauro's claim for relocation expenses incident to the subject transfers was proper.

Deputy **R. J. KELLER**
Comptroller General
of the United States