

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 2054

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**FILE:** B-211910**DATE:** September 26, 1983**MATTER OF:** Rudd and Erickson - Reimbursement for  
Relocation Expenses Incurred Incident  
to Merit Promotion Transfers**DIGEST:**

1. Two National Park Service employees, who had recently transferred to new duty stations, applied and were accepted for merit promotion transfers despite an agency policy not to approve more than one transfer for an employee at Government expense within 1 year. These employees are entitled to their relocation expenses since the agency policy was not clearly communicated to the applicants in advance. See Reconsideration of Platt, 61 Comp. Gen. 156 (1981). In addition, the agency policy was directed to selecting officials. Once the selections were made without clear advance notice, the agency could not declare that the transfers were not in the interest of the Government.
2. National Park Service has an agency policy not to approve more than one transfer for an employee at Government expense within a year unless the Director approves an exception. Under Reconsideration of Platt, 61 Comp. Gen. 156 (1981), the agency may issue a regulation concerning relocation expenses and merit promotions which sets forth conditions under which relocation expenses will or will not be paid. The agency policy is valid and may be applied to merit promotion transfers, provided that the conditions are clearly communicated in advance and in writing to all applicants.

The issue in this decision involves the claims of two National Park Service employees for relocation expenses where the employees, transferring pursuant to a merit promotion program, undertook a second transfer within 1 year's

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time. Although there was a National Park Service policy to deny relocation expenses for more than one transfer per year, we hold that these transfers were in the interest of the Government and that relocation expenses must be paid.

This decision is in response to a request from Mr. James D. Clark, Chief, Division of Finance, Rocky Mountain Regional Office, National Park Service, Department of the Interior, for an advance decision concerning the reimbursement of relocation expenses to two employees, Mr. John D. Rudd and Mr. James Erickson.

Mr. Rudd transferred from Glen Canyon National Recreation Area, Arizona, to a position at Death Valley National Monument, California, in February 1978, and he was reimbursed for his relocation expenses. Subsequently, he applied for a position in Dinosaur National Monument, Colorado, advertised under the agency's merit promotion plan, and he was selected on September 28, 1978. He was then advised that since he had transferred within the past year, the agency would not pay his relocation expenses to the new position. Mr. Rudd transferred to Dinosaur National Monument effective October 22, 1978, and he has since submitted a claim for relocation expenses in the amount of \$946.97.

Mr. Erickson transferred to Yellowstone National Park, Wyoming, from a position with the Bureau of Indian Affairs in Arizona in July 1981, and he was reimbursed for his relocation expenses. In September 1981, he applied for a position under a vacancy announcement in Grand Teton National Park, Wyoming, he was accepted for the promotion, and he was authorized relocation expenses. Mr. Erickson received a travel advance of \$1,400, and he has claimed relocation expenses of nearly \$2,400, but the agency now questions his entitlement to reimbursement for the second transfer.

The agency policy on more than one transfer within 1 year was first contained in a memorandum from the Associate Director, Administrative Services, National Park Service, dated August 28, 1978, which provided that:

"Any proposed personnel action which would incur change of duty station travel costs for an employee who has not been assigned to his/her duty station for at least 12 months prior to the proposed effective date of the

new assignment must be approved by the Director. A copy of the Director's approval memorandum must be attached to the applicable travel authorization".

This requirement was also added to the agency's Travel Handbook for Rocky Mountain Region employees, March 1, 1979, which provided as follows:

"It is in the best interests of the Service to obtain the maximum benefit of an employee's previous experience and training upon relocation to a new park area or office. It is also in the best interests of the employee to gain maximum benefit from the developmental experience and training opportunities that can be derived from a new position following relocation. These benefits can seldom be achieved in a period less than 2 years, and almost never less than 1 year, following relocation. Although Federal personnel laws and regulations do not prohibit employees from applying for other jobs immediately after moving to a new position, such action is strongly discouraged. It is neither commercial nor efficient to move the same individuals in rapid succession.

"It is the policy of the Service not to authorize a change of official duty station for the same employee twice within a 12 month period, unless written approval is obtained from the Director. The Service does not have the discretion to not pay for an employee's change of station if the transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee or at his or her request. It is, therefore, important that selecting officials not make job selections which would result in an employee's transfer unless the Director's approval is obtained first."

It appears that neither Mr. Rudd nor Mr. Erickson received prior approval from the Director of the National Park Service for their second transfers.

Our decisions have held that an employee is entitled to relocation expenses incurred incident to a change of duty station if his transfer is determined to have been in the interest of the Government rather than primarily for the convenience or benefit of the employee. See paragraph 2-1.3, Federal Travel Regulations (FPMR 101-7) (November 1981). See also Bernard J. Philipps, B-206624, August 16, 1982; and Fred L. Spillan, B-203439, January 27, 1982. Absent an agency regulation to the contrary, the selection and transfer of an employee pursuant to a merit promotion program, is considered to be an action taken in the interest of the Government; and the employee is, therefore, entitled to relocation costs, including moving expenses, under 5 U.S.C. §§ 5724 and 5724a (1982). Eugene R. Platt, 59 Comp. Gen. 699 (1980); and Bruce E. Stewart, B-201860, August 27, 1982. The question thus narrows to whether the National Park Service had a valid agency regulation under which it could deny relocation expenses to an employee transferred pursuant to the Merit Promotion Plan.

In Reconsideration of Eugene R. Platt, 61 Comp. Gen. 156 (1981), we provided guidance as to the type of regulation which would suffice for this purpose. We stated there that such a regulation should indicate the conditions and factors to be considered in determining whether a transfer pursuant to a merit promotion would be "in the interest of the Government for purposes of the reimbursement of relocation expenses." 61 Comp. Gen. 156, at 162. We further held that an adequate regulation "should require that such information be clearly communicated in advance and in writing to all applicants, preferably by a statement on the vacancy announcement." 61 Comp. Gen. 156, at 162.

The rationale underlying the agency policy in this case appears to be related to the cost effectiveness of transfer actions, an agency consideration specifically noted as permissible by our decision in Reconsideration of Platt, cited above. However, we conclude for the following reasons that the agency may not deny relocation expenses to these two employees.

First, there is no indication that the policy was clearly communicated in advance and in writing to all applicants for these vacancies. In Mr. Rudd's case, he was not advised of the policy until notification of his selection

for the position, while Mr. Erickson apparently learned of the policy only after his transfer since he was authorized relocation expenses and was given a travel advance.

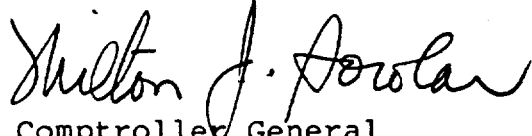
Second, the thrust of the agency policy, as shown by the Rocky Mountain Region Handbook, quoted above, was that selecting officials must not make job selections which would result in two transfers within 1 year, unless prior approval was obtained from the Director of the National Park Service. The agency, therefore, violated its own internal procedures in making these selections without seeking prior approval from the Director. However, once the agency selected these two employees under merit promotion procedures, it could not declare the transfers to be not in the interest of the Government without having notified the applicants of this policy prior to filing of their applications. Since a transfer under a merit promotion program is normally in the interest of the Government, the agency must reimburse the relocation expenses claimed by Mr. Rudd and Mr. Erickson.

We note that Mr. Rudd was notified that relocation expenses would not be reimbursed and that no travel authorization was issued for his transfer although he did sign a service agreement. However, our decisions have held that an employee's acceptance of a position after having been informed that relocation expenses would not be reimbursed, does not, therefore, bar him from claiming such expenses if he is otherwise legally entitled to receive them. Stewart, cited above. See also Frank E. Hanson, Jr., B-201256, April 27, 1981. Further, we have held that the absence of travel orders does not bar the employee's entitlement to reimbursement. Mr. James E. Hansard, B-201732, June 30, 1981.

Accordingly, Mr. Rudd and Mr. Erickson are entitled to reimbursement for their claimed relocation expenses, if otherwise correct.

Although we have held that these two employees must be reimbursed under the circumstances presented in this case, we have not overruled the agency's policy concerning two transfers within 1 calendar year. As we stated in Reconsideration of Platt, cited above, an agency may issue a regulation concerning relocation expenses and merit promotions which sets forth the conditions under which relocation

expenses will or will not be paid. Thus, when such information later appears in a vacancy announcement or similar document, each person who applies will be on notice of the conditions pertaining to the payment of relocation expenses if that person is selected for the position. The National Park Service's policy was not properly applied to these two merit promotion transfers, and, thus, these two employees must be reimbursed for their expenses.

*for*   
Comptroller General  
of the United States