



Comptroller General  
of the United States

Washington, D.C. 20548

140534

## Decision

**Matter of:** Donald R. Rutt - Reemployment - Highest  
Previous Rate Rule

**File:** B-247265

**Date:** June 5, 1992

---

### DIGEST

The salary of an employee who, in 1979, had resigned a government position at the grade GS-6, step 6 level, was properly set upon reemployment in 1989 at the grade GS-4, step 4 level, and then upon later promotion at the grade GS-6, step 1 level. The evidence presented does not establish that the agency abused its discretion in applying the highest previous rate rule.

---

### DECISION

Mr. Donald R. Rutt, an employee of the Bureau of Reclamation, Department of the Interior, has appealed the determination of our Claims Group<sup>1</sup> that upon his reemployment and succeeding promotion his agency properly exercised its discretion under the highest previous rate rule in setting his rate of pay. We agree that the agency had the discretion to set Mr. Rutt's pay at the level it did upon both occasions.

In 1979, Mr. Rutt resigned from a grade GS-6, step 6 position as Office Service Assistant in the Federal Highway Administration. This position included some duties similar to those of a Mail Supervisor. After later employments in lower-graded positions with the Postal Service and Veterans Administration from which he resigned, Mr. Rutt was reinstated in the federal service by the Bureau of Reclamation in a grade GS-4, step 4 position of Mail Clerk on December 11, 1989. He was promoted to the position of Mail Supervisor, at grade GS-6, step 1, effective January 14, 1990. Mr. Rutt claims that in neither the reinstatement nor promotion was his rate of pay set in accord with the highest previous rate rule, which would allow an equivalent rate to the grade GS-6, step 6 rate he

---

<sup>1</sup>Z-2866612, Sept. 10, 1991.

held in 1979 as an Office Service Assistant. Mr. Rutt believes that under this rule agencies are required to give employees the benefit of their highest previous salary rate.

An employee has no vested right upon reemployment to receive the highest salary rate previously paid to the employee. Under the provisions of 5 U.S.C. § 5334(a) (1988) and 5 C.F.R. §§ 531.203(c) and (d) (1990), reemployed personnel may be paid at the highest previous pay rate. We consistently have held that these provisions give each agency the discretion to formulate its own policy regarding the application of the rule. Jean M. Drummond, B-229165, Aug. 8, 1988, and cases cited. Furthermore, a retroactive adjustment of the salary rate will not be made unless there has been an administrative error, defined as an agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." Barbara J. Cox, 65 Comp. Gen. 517 (1986).

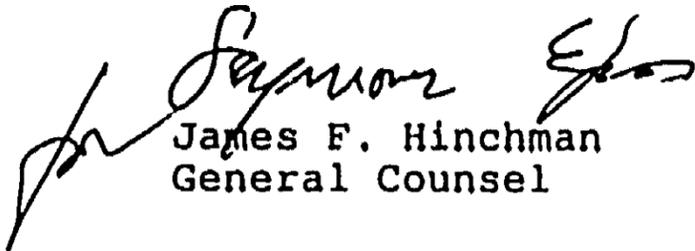
The Bureau of Reclamation's policy for reemployment actions emphasizes that the setting of an employee's salary at his highest previous rate is discretionary and lists several factors to be considered, including the experience of the employee and the consistency of pay rates of other employees serving in identical positions. See Bureau of Reclamation Administrative Directive No. 7500-06, May 1, 1989. The agency states that these factors were considered and resulted in Mr. Rutt's salary being set at the grade GS-4, step 4 level rather than a higher level to match his previous rate. Since the record contains no substantial evidence that the agency's discretion was abused, there is no basis to disturb Mr. Rutt's reemployment at the grade GS-4, step 4 level.

When Mr. Rutt was promoted to Mail Supervisor at grade GS-6, step 1, his salary rate was increased by at least two step increases from the grade GS-4, step 4 level, as required by 5 U.S.C. § 5534. The agency's policy in this promotion situation is to set the salary at a rate based upon the employee's highest previous rate provided the previous service was recent (within approximately 5 years) and relevant to the new position. See Reclamation Instructions FPM R531.2.1, Aug. 8, 1986. The agency stated that since Mr. Rutt's experience in supervising a mail function derived from his service in 1979, which was considerably more than five years old, it was not the kind of service that required a salary set at the highest previous rate upon promotion. Although Mr. Rutt believes it is not proper to consider the character of an employee's prior service in applying the highest previous rate rule to promotions, we believe that the agency's policy in doing so is a valid exercise of its discretion. Since the record contains no substantial evidence that the agency's discretion was abused in not

setting Mr. Rutt's salary at his highest previous rate upon promotion, there is no basis to disturb the grade GS-6, step 1 level. See Virginia A. Rawlings, B-195032, July 25, 1979.

Mr. Rutt further alleges that if our Office had conducted an investigation, we would have discovered different reasons than the ones given by the agency for not setting his salary upon reemployment and promotion at his highest previous rate. The burden of proof is on claimants to establish the liability of the United States and the claimant's right to payment. We do not conduct investigations or adversary hearings in adjudicating claims but rely on the written record presented by the parties. See Frank A. Barone, B-229439, May 25, 1988; 4 C.F.R. § 31.7 (1992). In this case, Mr. Rutt has furnished no substantial evidence to refute the agency's description of its application of its discretionary, written policies concerning the highest previous rate rule.

Accordingly, we sustain our Claims Group's denial of Mr. Rutt's claim.

  
James F. Hinchman  
General Counsel