

DECISION



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

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FILE: B-197729

DATE: August 6, 1980

MATTER OF: Henry C. Miller - Relocation Expenses

DIGEST: Customs Service employee laterally reassigned in same grade from position in Miami, Florida, to position in Charleston, South Carolina, with no greater promotion potential may not be reimbursed relocation expenses even though vacancy was advertised under Merit Promotion Plan since such transfers at time of employee's move were considered by Customs Service to be exception to Merit Promotion Plan.

This is in response to a request from the National Treasury Employees Union for reconsideration of our Claims Division's Settlement Certificate No. Z-2809679, dated August 13, 1979, which disallowed Mr. Henry C. Miller's claim for relocation expenses incurred in connection with his transfer from Miami, Florida, to Charleston, South Carolina.

Effective May 22, 1977, Mr. Miller, an employee of the United States Customs Service, was reassigned from a Customs Inspector, GS-1890, position in Miami to a position in Charleston bearing the same title and GS series number. He was employed in Charleston at the same GS-9, step 5, salary he earned in Miami. Under the "Remarks" section of the Standard Form 50 which documents his reassignment it is stated, "Transfer effected at no expense to the Government."

Mr. Miller states that he was selected for the Charleston position after applying for a vacancy announced under the Merit Promotion Plan. Assuming that his transfer was in the interest of the Government, on January 14, 1978, he requested reimbursement of relocation expenses in accordance with paragraph 2-1.3 of the Federal Travel Regulations (FTR) (FPMR, May 1973) which provides:

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"Travel Covered. When change of official station or other action described below is authorized or approved by such official or officials as the head of the agency may designate, travel and transportation expenses and applicable allowances as provided herein are payable in the 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;
* * *

The Regional Commissioner of the Miami Region denied his claim informing him that--

"It is the policy of the Miami Region not to reimburse employees for travel and moving expenses when the move is to a position of no known promotion potential and at the employee's request except in instances where past recruitment effort failed to produce highly qualified candidates and determination was made that payment would be to the benefit of the Government."

Mr. Miller contests this determination stating:

"Since the present selection process was presumably established to insure selection of the best qualified applicant for an advertised vacancy, whether by promotion or by alternate staffing [lateral transfer], it seems inconsistent to rule, after making a selection, that the candidate so selected would result in a transfer that is primarily for the convenience of the individual and not in the interest of the Government, thereby making that individual ineligible for reimbursement for moving costs."

Our Claims Division based its disallowance of Mr. Miller's claim on Ferdinando D'Alauro, B-173783.192, December 21, 1976, which also involved the claim of a Customs Service employee for relocation expenses incurred incident to a lateral transfer. In that decision we stated as follows:

"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-185077, 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."

Although we held that relocation expenses of employees transferred under the Merit Promotion Plan must be reimbursed, this did not mandate payment of Mr. D'Alauro's claim because the Customs Service informed us that it considered his transfer at the same grade to a new position with no greater promotion potential than his former position to be outside the Merit Promotion Plan. As we pointed out in D'Alauro, the relevant Civil Service regulations providing for merit promotion programs, found at chapter 335, Federal Personnel Manual, provide at subchapter 2-1(b) 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."

In D'Alauro, therefore, since the reassignment was considered to be outside the Merit Promotion Plan, that Plan could not be the basis for automatic entitlement to relocation expenses. The Customs Service viewed Mr. D'Alauro's transfer as essentially being at his own request and, therefore, determined that his transfer was for his own convenience and benefit rather than in the interest of the Government. We upheld the Customs Service's determination since there was no evidence it was arbitrary or capricious.

In the present case the Union contends that the Customs Service misapplied regulations which would allow Mr. Miller the reimbursement he requests. On March 30, 1978, the Miami Regional Commissioner issued Circular MAN-17-A:M setting forth the region's policy regarding payment of moving expenses and allowances. Paragraph 4.a of that Circular provides in pertinent part that:

"Travel and moving expenses will be approved as a result of filling a position under the Merit Promotion Plan, i.e., whether a promotion results or the best qualified selectee is a lateral transfer into the vacancy."

On September 14, 1978, a new Circular was issued, superseding the March 30, 1978, Circular. Paragraph 3.b.2 of that Circular limited reimbursement for relocation expenses to lateral selectees to positions advertised under the Merit Promotion Plan to those selected within the announced "area of consideration," with certain exceptions not pertinent here.

The Union contends that the Customs Service utilized the September 14, 1978, Circular when it should have based its determination on the March 30, 1978, Circular. Although as a lateral selectee Mr. Miller would have been entitled to reimbursement under the March 30, 1978, Circular and perhaps under the September 14, 1978, Circular if he was within the area of consideration, neither of these Circulars applies to his situation. Mr. Miller was reassigned on May 22, 1977, and both of the Circulars were published in 1978 and were effective upon their receipt.

Although the Customs Service's policy with regard to reimbursement of relocation expenses was unwritten prior to the issuance of these Circulars, we have been informed that at the time of Mr. Miller's reassignment it was Customs

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Service's policy not to reimburse relocation expenses when the employee was laterally transferred to a position which had no greater promotion potential than the former position.

Accordingly, we find no basis upon which we can grant Mr. Miller's claim and the disallowance of his claim by our Claims Division is hereby upheld.

Milton J. Fowler

For the Comptroller General
of the United States