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Civ. Pers.

DECISION



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

FILE: B-138942

DATE: January 3, 1977

MATTER OF: Fly America Act - Additional per diem
for delay in travel

DIGEST: Up to 2 days additional per diem is payable to comply with the requirement of 49 U. S. C. § 1517 for use of available certificated air carrier service for foreign air transportation. If total delay, including delay in initiation of travel, in en route travel and additional time at destination before the employee can proceed with his assigned duties, involves more than 48 hours per diem costs in excess of per diem that would be incurred in connection with use of noncertificated service, certificated service may be considered unavailable.

The Department of State by letter of August 19, 1976, has requested a decision concerning application of 49 U. S. C. § 1517 and the Comptroller General's Guidelines for Implementation of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, issued March 12, 1976. Its specific concern is with a possible decrease in the number of certificated air carrier flights departing from Moscow, Russia, for the United States.

We are advised that the only certificated air carrier serving Moscow is Pan American World Airways and that it is State Department's understanding that, as of October 1976, Pan American intended to reduce service from Moscow to one flight per week. To date the airline schedules reflect that Pan American still provides service out of Moscow twice weekly, and we understand that a reduction in service is not presently contemplated. Nevertheless, the problem which State Department poses is present even when certificated service is provided twice a week and the resolution of that problem is basic to implementation of 49 U. S. C. § 1517.

The State Department points out that requiring an employee to use a certificated air carrier serving Moscow as infrequently as once or twice a week could result in an employee delaying the initiation of his travel for several days beyond the date he is available to travel, or arriving at his temporary duty point several

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days before he is able to perform the duty for which he was sent. The State Department also points out that to require an employee to travel on his nonworkday would be in conflict with the policy in 5 U.S.C. § 6101(b)(2) of scheduling travel during an employee's regular workweek. In view of the fact that such delay could be costly as well as inefficient, the State Department seeks guidance as to the length of delay permissible to facilitate use of certificated service in compliance with 49 U.S.C. § 1517.

The Comptroller General's guidelines, cited above, require Government-financed commercial foreign air transportation to be performed by certificated air carriers where available. They set forth in paragraph 4 criteria for determining when such service is "unavailable" as follows:

- "(a) when the traveler, while en route, has to wait 6 hours or more to transfer to a certificated air carrier to proceed to the intended destination, or
- "(b) when any flight by a certificated air carrier is interrupted by a stop anticipated to be 6 hours or more for refueling, reloading, repairs, etc., and no other flight by a certificated air carrier is available during the 6-hour period, or
- "(c) when by itself or in combination with other certificated or noncertificated air carriers (if certificated air carriers are 'unavailable') it takes 12 or more hours longer from the origin airport to the destination airport to accomplish the agency's mission than would service by a noncertificated air carrier or carriers, or
- "(d) when the elapsed traveltime on a scheduled flight from origin to destination airports by noncertificated air carrier(s) is 3 hours or less, and service by certificated air carrier(s) would involve twice such scheduled traveltime."

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The above-quoted criteria are addressed to air travel en route from origin airport to destination, or elapsed traveltime. The guidelines establish no policy regarding the initiation of travel or the timing of arrival, and provide no guidance in determining the length of time an employee should delay his departure at origin or remain idly at destination before commencing work to facilitate his use of certificated air carrier service. In part the question of the timing of travel is a matter of travel management for determination by the department or agency involved inasmuch as determinations such as the employee's availability for travel and the urgency of the department's or agency's need for his services are within its knowledge and control. However, the question of how much additional per diem is payable to comply with the guidelines is properly before this Office.

In enacting 49 U. S. C. § 1517, Congress recognized that the requirement to use available U. S. flag certificated air carrier service would involve additional inconvenience as well as additional cost in international air travel. Thus, subparagraph 3(a) of the guidelines provides that certificated air carrier service is considered "available" even though "comparable or a different kind of service by a noncertificated air carrier costs less." This statement refers to the comparative cost of air fare aboard certificated as opposed to noncertificated carriers and is not directed at costs incurred incident to travel, such as per diem.

The guidelines do, however, recognize that additional per diem expenses will be incurred to effectuate the policy of 49 U. S. C. § 1517. The unavailability criteria set forth at paragraph 4 of the guidelines contemplate delay in en route travel for which per diem may be paid. In fact, subparagraph 4(c) imposes upon travelers a potential delay in travel of up to 12 hours and thereby sanctions payment of up to 12 hours additional per diem to comply with the requirement for use of certificated air carrier service.

Although the unavailability criteria set forth in the guidelines are limited to considerations of delay en route, the concept of availability of certificated service under 49 U. S. C. § 1517 clearly contemplates some delay in the initiation of travel, as well as at destination, for which payment of additional per diem is warranted. We have previously addressed the question of how much delay is warranted to facilitate use of American flag service in the context of Senate Concurrent Resolution 53 dated October 1, 1962. That

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resolution required travel on official Government business to be performed on American flag air carriers except where travel on other aircraft was essential to the official business concerned or was necessary to avoid unreasonable delay, expense or inconvenience. In B-148906, July 5, 1962, we held that a delay of 48 hours in the initiation of travel to enable the employee to avail himself of American flag service was not unreasonable and that additional per diem expenses occasioned by that delay were payable.

We have recognized that additional per diem costs of up to 48 hours may be paid to effectuate other travel policies. Section 6101(b)(2) of title 5 of the United States Code requires that, to the maximum extent practicable, travel be scheduled within the employee's regularly scheduled workweek. Under that authority we have held that travel may be delayed to permit an employee to travel during his regular duty hours and that payment of up to 2 days additional per diem for that purpose is not unreasonable. 50 Comp. Gen. 674 (1971); 51 id. 727 (1972); 53 id. 882 (1974).

Giving consideration to collateral delay costs such as per diem and salary and to the fact that such costs, unlike costs of air fare, do not confer a direct benefit on certificated air carriers, we believe that the additional per diem payable in furtherance of 49 U.S.C. § 1517 normally should be limited to 48 hours. If the total delay to facilitate use of certificated service involves more than 48 hours per diem costs in excess of per diem that would be incurred in connection with the use of noncertificated service, certificated service may be considered unavailable. The 48 hours includes delay in initiation of travel, in en route travel and additional time at destination before the employee can proceed with his assigned duties.

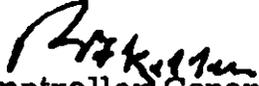
The usual travel situation will not involve delay both at point of origin and point of destination. Since per diem is not payable at the employee's permanent duty station, there will be no cost associated with delay in initiating travel where the employee's point of departure is his permanent duty station. In general, delay in initiation of travel will be involved only where the employee, upon completing his assignment at a temporary duty location, is available for further or return travel. By the same token, since the traveler's per diem entitlement terminates upon return to his permanent duty station, no delay cost at destination will be involved where that destination is the employee's regular

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duty station. Such delay may occur where the employee's temporary duty assignment at destination involves the performance of work in accordance with a nonflexible schedule. In most cases, however, some flexibility will exist in timing the employee's performance of his assignment at destination and, in those case, it is expected that the traveler's duties will be scheduled to minimize delay. Delay both at origin and destination is anticipated only where the employee is traveling between two temporary duty points at both of which he is subject to an inflexible work schedule.

State Department has recommended a certification process whereby the traveler will be furnished by his department or agency with a certification as to the time and date of his availability to begin travel. We believe that such a certification procedure, both as to the employee's availability for travel and the scheduling of work at destination, would permit a determination of the additional per diem costs involved and would facilitate the proper scheduling of travel in accordance with 49 U. S. C. § 1517.

Deputy


Comptroller General
of the United States