

DOCUMENT RESUME

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[Hours of Travel: Fly America Act]. B-138942. May 19, 1977. 8 pp.

Decision re: Department of State; by Robert F. Keller, Deputy Comptroller General.

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Authority: Fly America Act (49 U.S.C. 1517). F.T.R. (PPNR 101-7), para. 1-7.5e. 2 J.T.R. C4465-3. 55 Comp. Gen. 1230. 55 Comp. Gen. 510. B-138942(3) (1977). B-138942(2) (1977).

To fly between points in the U.S. and points outside the U.S. between midnight and 6 a.m., traveler must use certified air carrier per Fly America Act. Agency therefore may grant brief administrative leave for "acclimatization rest" at destination. To fly between two points outside U.S. from midnight to 6 a.m., traveler may use noncertificated service to nearest point that connects with certificated carrier. (DJM)

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DECISION



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

*Civ Per.
Wilcox*

FILE: B-138942

DATE: ~~May~~ 19, 1977

MATTER OF: Fly America Act - Hours of Travel

DIGEST:

1. Where the only certificated air carrier service available between points in the United States and points outside the United States requires boarding or leaving the carrier between midnight and 6 a. m., or travel spanning those hours, the employee is required by 49 U. S. C. § 1517 to use such service insofar as otherwise available under the Comptroller General's Guidelines of March 12, 1976, and decisions of this Office. B-138942(3), January 3, 1977, Fly America Act - Hours of travel modified.
2. Where, to comply with 49 U. S. C. § 1517, an employee travels by certificated U. S. air carrier requiring boarding or leaving carrier between or travel spanning the hours of midnight and 6 a. m., he may be granted a brief period of administrative leave and additional per diem for "acclimatization rest" at destination.
3. Where the only certificated air carrier service between points, both of which are outside the United States, requires boarding or leaving the carrier between or travel spanning the hours of midnight and 6 a. m., and where a noncertificated carrier is available which does not require travel at those hours, the certificated service may be considered unavailable. The traveler may instead travel by noncertificated carrier to the nearest practicable interchange point on a usually traveled route to connect with a certificated carrier in accordance with 55 Comp. Gen. 1230 (1976). B-138942(3), January 3, 1977, Fly America Act - Hours of travel modified.

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The Department of State has requested a clarification of our holding in B-138942(3). January 3, 1977, Matter of Fly America Act - Hours of Travel, insofar as it relates to travel during hours normally allocated to sleep. In that decision we held in part that an employee is not required to use certificated U. S. air carrier service where the only such service requires boarding or leaving the carrier between the hours of midnight and 6 a. m. and where noncertificated air carrier service is available which does not require travel during those hours. The rationale of the decision reasonably extends to travel spanning the hours of midnight and 6 a. m.

We are asked whether the above-cited decision, in relieving employees of the responsibility to use certificated service requiring travel between midnight and 6 a. m., authorizes transoceanic travel by noncertificated air carrier or indirect travel by a noncertificated air carrier to a point where a certificated U. S. air carrier can be used for transoceanic travel. As a case in point, the Department of State points out that the only certificated service available between Dakar, Senegal, and New York is provided by three Pan American flights per week departing Dakar at 1:55 a. m. and arriving in New York at 5:55 a. m. In view of our January 3 holding, we are asked whether Department of State employees may instead travel on an Air Afrique flight departing Dakar at 3:50 p. m. and arriving in New York at 7:20 p. m., or whether the traveler should be routed indirectly to Paris aboard a foreign air carrier to connect the following day with a certificated flight to New York at an additional cost of approximately \$50.

We are in agreement with the Department of State's suggestion that our holding in Fly America Act - Hours of travel is in need of clarification, particularly as it applies to international air travel originating from or terminating in the United States, including Alaska and Hawaii. In that case we held that employees are not required to use the only certificated service available requiring travel between midnight and 6 a. m. if noncertificated service is available which does not require travel during those hours. That holding was not intended to sanction travel by noncertificated carriers between points in the United States and points located outside the United States when certificated service is otherwise available under the Comptroller General's "Guidelines for Implementation of

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Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974" issued March 12, 1976, and decisions of this Office.

In 55 Comp. Gen. 1230 (1976) we set forth the general rule that, in scheduling international air travel, certificated service should be used from origin to the furthest practicable interchange point on a usually traveled route and, where an origin or interchange point is not served by a certificated carrier, that noncertificated service should be used from origin to the nearest practicable interchange point on a usually traveled route to connect with certificated service. In so holding we recognized one situation in which the intricacies of the above-recited rule should not be controlling:

"* * * Where the use of certificated carrier from point of origin to the furthest practicable interchange point, or the use of noncertificated service to the nearest practicable interchange point to connect with certificated service, leaves the traveler at a location from which he has no choice but to use a noncertificated carrier for actual transportation between the United States and another continent, the traveler should otherwise route his travel to assure that such intercontinental transportation is furnished by certificated carrier to the extent such service is available under the Guidelines."

While the above-quoted language is geared to the specific rules set forth in 55 Comp. Gen. 1230, it expresses a recognition by this Office of the fact that the complexities of scheduling international air travel make it extremely difficult to interpret the availability requirement of 49 U. S. C. § 1517 in a manner that will not occasionally permit abuse. The requirement that intercontinental air travel to and from the United States be performed by certificated U. S. air carriers otherwise available under the Guidelines is intended to minimize that potential for abuse.

We believe the same check on abuse must apply to international travel originating or terminating in the United States where the only certificated service requires travel between the hours of midnight and 6 a. m. and that Government travelers are required to use such service if it is otherwise available. Such a requirement is not

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unreasonable when considered in relation to the flight schedules of the various air carriers providing international air transportation service. Because of the time zone changes involved, some portion of most east-bound travel between the United States and points outside the United States is required to be performed within hours that the employee would otherwise be sleeping. Most west-bound travel results in arrival at a time when the employee can accommodate to local time only by foregoing sleep for much longer than ordinary periods of time.

The effects of time zone dislocation are recognized in the Federal Travel Regulations (FTR) (FPMR 101-7) para. 1-7.5e (May 1973):

"e. Time changes during air travel. When an individual travels direct between duty points which are separated by several time zones and at least one of the duty points is outside the contiguous United States, per diem entitlement is not interrupted by reason of a rest period allowed the individual en route or at destination under appropriate agency rules."

Various of the departments and agencies have specific regulations implementing the above. Subsection 132.5 of the Uniform State/AID/USIA Foreign Service Travel Regulation permits arrival at destination 24 hours before commencing duty where the origin and destination points are separated by five or more time zones:

"Travelers flying on a direct route, without interruption, except for flight connections, with a difference of five or more time zones between authorized points of travel should, whenever possible, arrange departure to allow arrival at destination a full day before commencing duty.

"When the flight is of such duration that it includes an authorized rest stop, as provided in section 132.4, the same consideration should be given at the conclusion of the trip, provided there is a difference of five or more time zones between the point of departure when travel was resumed and the destination point.

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"In cases meeting either of these criteria, excused absence without charge to leave may be granted for any part of the 24-hour adjustment period following arrival at the duty point which happens to fall within working hours.

"Per diem during the adjustment period is payable to temporary duty travelers, including dependents authorized to travel at Government expense when accompanying employees to temporary duty points, in accordance with section 126.4."

A similar provision is contained at para. C4465-3 of the Joint Travel Regulations, Volume 2, applicable to civilian employees of the Department of Defense.

In the context of east-west travel from the United States to points outside the United States, we believe adequate authority exists for allowing employees to readjust to time zone changes and to interruption of sleep. Since most such travel spans several time zones, the traveler would normally be entitled to additional per diem to provide a readjustment period without charge to leave at destination, irrespective of whether his travel was or was not at inconvenient hours. Thus, there appears to be no reason to exempt Government employees from the requirement to use certificated U. S. air carrier service requiring travel between midnight and 6 a. m., insofar as such service is otherwise available under the Comptroller General's Guidelines of March 12, 1976, and decisions of this Office. This is particularly so inasmuch as most competing direct service is provided by noncertificated carriers at equally inconvenient times and employees can avoid travel at such hours only by the use of connecting service. Under these circumstances, we believe most individuals traveling on personal business would elect a direct flight at inconvenient hours as opposed to extending the period of travel by the use of connecting service.

The regulations referred to above do not necessarily accommodate the situation of north-south flights between points within the United States and cities in Central and South America where travel across several time zones is not involved. Nevertheless, we do not believe it is unreasonable to expect Government travelers to use certificated U. S. air carrier service requiring travel between midnight and 6 a. m. for such travel. In this regard, an analysis

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of the Official Airline Guide for March 1977 indicates that in over half the cases where the only certificated U. S. air carrier service requires travel between midnight and 6 a. m., all direct flights by noncertificated carriers are similarly scheduled. In the remaining cases, by far the majority of direct noncertificated flights are scheduled at equally inconvenient times. For this reason we believe that individuals traveling on their personal business would generally schedule their travel between the United States and points in Central and South America during hours that would otherwise be allocated to sleep.

We recognize that regulations governing travel may not specifically provide employees an opportunity for rest at destination where they have been required to travel overnight. The regulations of several agencies do provide for rest stops en route where the employee would otherwise be required to travel for an extended period without interruption. For example, see subsection 132.4 of the Uniform State/AID/USIA Foreign Service Travel Regulations and para. C4465-4 of the Joint Travel Regulations, Volume 2. Because of the distances and flight times most travel between the United States and cities in Central and South America will not involve rest stop eligibility, and, in any event, rest stop regulations generally do not allow for a period of rest upon arrival at destination.

However, we have recognized agency discretion to grant administrative leave to employees for "acclimatization rest." Our holding in 55 Comp. Gen. 510 (1975) involved an employee who departed from Guam at 11:55 p. m. after completing a full day's work and arrived at his permanent duty station in Honolulu at 11 a. m. the same day after crossing the international dateline in the course of a 7-1/2-hour flight. We there held that since the scope of authority for granting time off without charge to leave in such circumstances is not clearly defined in law and regulations and since the granting of administrative leave for brief periods of time is within the discretion of the agency, we would not object to the employee's being granted administrative leave for rest purposes at destination. The holding in that case is a recognition of the Government's concern for the health and well-being of employees who are required to travel during hours that would otherwise be allocated to sleep. We believe this decision is adequate authority to excuse employees from duty for brief periods of time without charge to leave following air travel that commences or terminates between, or spans the hours of midnight to 6 a. m.

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Our holding in 55 Comp. Gen. 510, supra, is not itself authority for payment of additional per diem for periods of rest at destination and, in cases of return travel to the employee's duty station and permanent change of station travel, this is a matter of no particular concern since no additional per diem entitlement is involved. However, where air travel by the only available certificated U. S. air carrier during periods normally allocated to rest terminates at an employee's temporary duty station or at a location where he is entitled to a per diem allowance, we believe that the Fly America Act itself provides adequate authority for payment of additional per diem for the period of administrative leave for rest purposes at destination under the conditions discussed below.

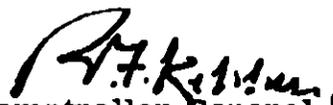
In B-138942(2), January 3, 1977, Fly America Act - Additional per diem for delay in travel, we sanctioned the payment of up to 2 days additional per diem to comply with the requirement for use of available certificated U. S. air carrier service. The rule as expressed in that case is that if total delay, 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 in excess of the per diem that would have been incurred in connection with the use of noncertificated service, certificated service may be considered unavailable. We thereby recognized that an employee may be scheduled to arrive at destination before he is able to perform the duty for which he is sent in order to permit his use of certificated U. S. air carrier service, to the extent that the total delay involved is not in excess of 48 hours more than would be involved in travel by noncertificated carrier. By the same token, an employee's reporting for duty may be delayed, or his arrival at destination may be accelerated, and he may be paid additional per diem to allow for an adequate period of rest at destination where his travel aboard certificated carrier commences or terminates between or spans the hours of midnight and 6 a. m., and where that and all other delay does not exceed by more than 48 hours the delay that would have been involved if the employee had traveled by noncertificated air carrier. If the additional per diem payable to provide the employee an adequate period of rest at destination following travel by certificated service, when considered together with all other per diem for delay, is more than 48 hours in excess of the per diem that would be payable in connection with the employee's use of noncertificated service, certificated service requiring travel at those hours may, nevertheless, be considered unavailable.

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The foregoing discussion does not apply to travel involving origin and destination points, both of which are outside the United States. With respect to such service, our holding in Fly America Act - Hours of travel remains controlling. When the only certificated U.S. air carrier service between two points outside the United States requires travel between the hours of midnight and 6 a. m., certificated service may be considered unavailable and the employee's travel should be scheduled in accordance with our holding in 55 Comp. Gen. 1230. That is, the employee should take a non-certificated carrier to the nearest practicable interchange point on a usually traveled route to connect with certificated service and may take direct foreign service only insofar as such connecting service is not available. The fact that connecting service may be somewhat more costly is irrelevant in view of the statement in the March 12 Guidelines to the effect that certificated service is available even though comparable or a different kind of service by non-certificated air carrier costs less.

When the employee elects to use certificated service between two points outside the United States requiring boarding or leaving the air carrier between midnight and 6 a. m., or requiring travel spanning those hours, he may be granted a period of rest at destination and per diem in accordance with the foregoing discussion. We believe that this may be a beneficial travel planning tool to both the agency and the traveler, particularly where no additional per diem cost would be occasioned by the traveler's earlier departure by certificated carrier between midnight and 6 a. m.

Our decision B-138942(3), January 3, 1977, Matter of Fly America Act - Hours of travel is modified accordingly.


Deputy Comptroller General
of the United States