

Kirkpatrick
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DECISION



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

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FILE: B-193290

DATE: February 15, 1979

MATTER OF: Richard H. Howarth - Medical necessity
for use of foreign air carrier

DIGEST: No deduction from airfare is required under Fly America Act for London to Washington portion of medical evacuation travel of State Department employee's wife from Rangoon to Washington. In view of the medical necessity involved, scheduling of her travel by foreign air carrier to reduce the number of connections and possible delays was required to accomplish the agency's mission. 57 Comp. Gen. 519 (1978) distinguished.

This decision responds to the appeal of Richard H. Howarth, who claims the amount of \$535.55 deducted by his employing agency, the Department of State, from air travel fare as a penalty for not using U.S. air carrier service. The travel was performed September 6 and 7, 1976, by Mr. Howarth's wife, who flew for medical treatment from Rangoon, Burma, to the Washington, D.C., area (Dulles Airport) via London, England. Our Claims Division disallowed the claim by its Settlement Certificate No. Z-2742492 of August 22, 1978.

The issue is whether, under the "Fly America Act," 49 U.S.C. § 1517 (Supp. V, 1975) and implementing regulations, a U.S. air carrier was available in lieu of the foreign air carrier actually taken by Mrs. Howarth on the London to Washington portion of the trip.

Our files show that a physician at the American Embassy, Rangoon, Burma, and medical specialists at Bangkok, Thailand, were unable to account for Mrs. Howarth's medical symptoms which appeared in August 1976. More thorough diagnostic procedures in Washington, D.C., were recommended, and Mrs. Howarth's medical travel to Washington was authorized at Government expense. Had she taken U.S. air carriers for the entire trip, overnight stopovers would have been necessary and would have required her to travel with a personal attendant. For this reason and because of discomfort caused by her medical condition, Mrs. Howarth's travel was routed from Rangoon to London

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by British Airways, a foreign air carrier, which did not require overnight stopovers. Mrs. Howarth's use of foreign air carrier service between Rangoon and London has not been questioned.

Mr. Howarth reports that the British Airways flight to London from Rangoon had on occasion arrived as late as 10:30 a. m., 1 hour after the scheduled arrival time of 9:30 a. m. However, it's actual arrival in London was at 10 a. m. on September 7, 1976. Although Mrs. Howarth might have made connections with a U. S. air carrier, Pan American, departing from London at 10:40 a. m., she continued on from London to Washington by a foreign air carrier, British Airways, which departed at 11:30 a. m. Our Claims Division's disallowance of Mr. Howarth's claim was based on the availability of U. S. air carrier service between London and Washington.

Mr. Howarth believes that the travel from London to Washington by foreign air carrier was justified. He notes that if the British Airways flight's arrival in London had been 1 hour late, rather than only 30 minutes late, Mrs. Howarth could not have made connections with the 10:40 a. m. Pan American flight from London on September 7. If she had not taken the British Airways flight and had missed the 10:40 a. m. plane, Mr. Howarth asserts she would have had to wait for Pan American's flight from London to New York at 3:15 p. m. that afternoon which would have required a stopover at New York and a connecting flight to Washington. Mr. Howarth observes that because of her medical symptoms, Mrs. Howarth was in no condition to make a quick decision or to act forcefully in a crowded airport during the 40 minutes available to make connections with Pan American's 10:40 a. m. flight. Further, he believes that the additional waiting period and New York stopover required for Pan American's 3:15 p. m. flight would have jeopardized Mrs. Howarth's health and safety.

Mrs. Howarth's medical evacuation from Rangoon and her medical evaluation and hospitalization in Washington are verified by State Department physicians. In this connection, we note that Mrs. Howarth's medical condition was such that she was authorized the use of first-class air accommodations from Rangoon to Washington, D. C.

In accordance with the Fly America Act, U. S. air carriers must be used to the extent they are available. The Comptroller General's Guidelines for Implementation of the [Act], B-138942, March 12, 1976,

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state in part that U.S. air carrier service is available "if the carrier can perform the commercial foreign air transportation needed by the agency and if the service will accomplish the agency's mission." Volume 6 of the State Department's Foreign Affairs Manual, subparagraph 134.2c, states in part that--

"* * *where use of a foreign flag airline is unavoidable en route, the foreign-flag airline may be used, but only to the nearest practicable interchange point to connect with available American-flag service, unless * * * the mission to be performed required greater use of the foreign-flag carrier."

In our decision Joint Chiefs of Staff, 57 Comp. Gen. 519 (1978), at page 522, we recognized that foreign air carrier service may be necessary to accomplish the agency's mission if its use is required to avoid an unreasonable risk to the traveler's safety. In that case we ruled that the ordinary hardship and inconvenience of changing flights in New York on trips between Washington and Europe did not make U.S. air carriers requiring New York connections unavailable to Government employees for such travel.

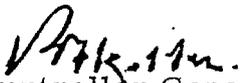
Mr. Howarth's point that it would have been difficult for Mrs. Howarth to make connections with the 10:40 a.m. Pan American flight from London to New York is well taken, given the fact that the British Airways flight from Rangoon arrived in London at 10 a.m. The Official Airline Guide (OAG) shows that the minimum connecting time required at London's Heathrow Airport was 60 minutes. While timely arrival of the flight from Rangoon would have permitted 70 minutes to make connections with the 10:40 a.m. Pan American flight, it may well have been difficult for Mrs. Howarth to make connections in the 40 minutes actually available to her. Given Mrs. Howarth's medical condition, we believe it would have been proper to schedule her travel on the reasonable assumption that her flight from Rangoon might have been delayed as much as 10 minutes.

More importantly, the OAG shows that the only available nonstop flights to the Washington area from London on September 7 were the 10:40 a.m. Pan American flight and the British Airways plane taken by Mrs. Howarth. The OAG shows four additional U.S. air carrier flights from London before the Pan American plane leaving

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at 3:15 p.m. mentioned by Mr. Howarth. Mrs. Howarth had sufficient time to make connections with any one of them. However, all of these flights arrived in the United States either at JFK International Airport in New York or at Boston and would have required her to make connections with another plane for travel between either of these points and Washington.

In view of Mrs. Howarth's medical problem requiring evaluation and hospitalization immediately upon her return to Washington, it appears that the additional time and burden of making connections to Washington from New York or Boston would have been a serious hardship and may have created an unreasonable risk to her health and safety. The physical symptoms Mrs. Howarth was suffering could be expected to aggravate the problems of passing through customs inspection, extra baggage handling, and movement between airline terminals. Under the circumstances it was prudent to schedule her travel to reduce the number of connections and possible delays. Her use of direct foreign air carrier service between London and Washington may be viewed as necessary to accomplish the agency's mission--her safe and expeditious medical evacuation. This case is distinguished from our decision in Joint Chiefs of Staff because of the medical necessity involved and the fact that U.S. certificated carriers were unavailable to accomplish the agency's mission. Accordingly, the entire amount of Mrs. Howarth's airfare may be paid, and our Claims Division's disallowance is overruled.


Deputy Comptroller General
of the United States