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DECISION



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

FILE: B-194057

DATE: July 11, 1979

MATTER OF: Kenneth M. Curtis [Indirect Travel by
Foreign Air Carrier and Railroad]

DIGEST: Where U.S. air carriers were available from last point of official business, but where traveler combined personal business with his return travel and used a train and a foreign air carrier for segments of the journey, the traveler may not be reimbursed travel expenses representing revenues diverted from U.S. air carriers to foreign air carriers. Using the fare proration method set forth in 56 Comp. Gen. 209 (1977), the Fly America Act penalty is determined by subtracting the rail fare from the amount of revenues lost by U.S. air carriers determined under that formula.

This decision is in response to a request by the Chairman, United States Section, International Joint Commission (IJC), United States and Canada, to consider the disallowance of part of a travel voucher submitted by and paid to Governor Kenneth M. Curtis, one of the IJC's Commissioners. The disallowance was based on a determination by the Department of State that the Commissioner should be assessed a penalty for violating the statutory requirement to use U.S. air carrier service whenever available. That statute, commonly referred to as the Fly America Act, is Section 5 of the International Air Transportation Fair Competitive Practices Act of 1975, 49 U.S.C. § 1517 (1976). CNG
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The Commissioner was authorized to travel by air from Portland, Maine, to Penticton and Vancouver, British Columbia, and to return to Portland. When the Commissioner completed his official duties in Vancouver, he traveled by rail at a cost of \$46.84 to Calgary, Alberta, for personal business. He then returned to Portland by air, using a foreign air carrier between Calgary and Chicago, Illinois, because he believed that only foreign air carriers provided service from Calgary. The airfare from Calgary to Portland was \$221.42. On his travel voucher, the Commissioner claimed the constructive airfare

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B-194057

between Vancouver and Portland of \$265.52, which was \$2.34 less than the expense he incurred for his return travel by way of Calgary. The Department of State disallowed \$106.01 of the amount claimed as a penalty for improper use of a foreign air carrier inasmuch as U.S. air carriers provided service between Vancouver and Portland. The Chairman of the IJC has asked that the penalty assessment be reconsidered in view of the fact that the Commissioner's decision to continue his travel from Calgary rather than to return to Vancouver was prudent, both in terms of time and cost.

The Fly America Act provides:

"* * * The Comptroller General of the United States shall disallow any expenditure from appropriated funds for payment of such personnel or cargo transportation on an air carrier not holding a certification under Section 401 of this Act in the absence of satisfactory proof of the necessity therefore. * * *"

Guidelines implementing the Act were issued by the Comptroller General. See B-138942, March 12, 1976. Among other things, they provide that a U.S. air carrier which can provide the service needed is considered available even though comparable or a different kind of service by a foreign air carrier costs less or is preferred by the traveler. Under the Guidelines, we have held that a traveler must take U.S. air carrier service available at point of origin to the furthest practicable interchange point. 55 Comp. Gen. 1230 (1976). Where the traveler does not properly route his travel, he is liable for any loss of revenues by U.S. air carriers which results from improper use of or indirect travel by noncertificated air carriers. 56 Comp. Gen. 209 (1977).

In B-188648, November 18, 1977, we held an employee liable under the Fly America Act for \$16.02 where, incident to his official travel by way of London, he combined personal travel by trading in his ticket to obtain a substitute ticket permitting him a side trip between London and Edinburg aboard a

B-194057

foreign flag carrier. In response to the traveler's arguments that there was no U.S. air carrier service between London and Edinburg, that the travel was performed at no cost to himself or the Government, and that it was performed on his own time, we stated:

"* * * where the employee takes a side trip or otherwise indirectly routes his travel, and where such indirect travel is wholly or in part subsidized by the fare payable by the Government in connection with the employee's official itinerary, the employee is responsible not only for any additional cost attributable to his personal travel but for any diversion of revenues from certificated U.S. air carriers. 56 Comp. Gen. 209 (1977). The opportunity that Government travel may afford an employee to augment his personal travel plans is purely fortuitous and is sanctioned only insofar as it does not result in additional cost to the Government or contravene otherwise applicable laws and regulations. To the extent that such personal travel results in a reduction in receipt of Government revenues by U.S. air carriers over revenues they would have earned had the employee performed only authorized travel, that personal travel does involve a violation of the requirement for use of certificated U.S. air carrier service imposed by 49 U.S. C. § 1517."

Under these authorities, the Commissioner is responsible for the portion of the airfare payable by the Government which his personal travel to Calgary diverted from U.S. to foreign air carriers. We note that his responsibility under the Fly America Act does not extend to amounts diverted to carriers providing other modes of transportation, such as railroads or vessels. B-190575, May 1, 1978. Contrary to the Commissioner's understanding, U.S. air carrier service to Portland, Maine, by way of Denver, Colorado, was available in Calgary on the morning he traveled. Had he taken that flight, he would not

B-194057

have been subject to a penalty since the only redistribution of revenues occasioned by his personal travel would have been from U.S. air carriers to the railroad which provided service between Vancouver and Calgary. However, the Commissioner traveled from Calgary to Chicago aboard a foreign air carrier. He is, therefore, responsible for the prorated portion of the \$265.52 airfare from Vancouver that was transferred from U.S. air carriers to the foreign air carrier which provided service from Calgary to Chicago. The same penalty would pertain even if there had been no U.S. air carrier providing service from Calgary, since the Commissioner's travel to Calgary was personal rather than for official business.

Thus, we are in agreement with the Department of State's determination to assess the Commissioner a penalty for the use of a foreign air carrier occasioned by his personal travel to Calgary. Because the travel to Calgary was not for official business, the fact that it was less costly and more efficient in terms of the traveler's personal itinerary, does not provide a basis to disregard the requirement to use otherwise available U.S. air carrier service. However, we are unable to verify the \$106.01 penalty which appears to have been calculated by the Department of State on the basis of a proration of the fares involved. Using the fare proration method discussed in 56 Comp. Gen. 209 (1977) and subtracting the rail fare of \$46.44 for travel from Vancouver to Calgary, the penalty for which the Commissioner is responsible is \$90.51 and since the Commissioner already has been assessed a penalty of \$106.01 by the Department of State, there is a refund of \$15.50 due him.

Because a portion of the indirect travel involved was by rail, calculation of the penalty amount involves an additional step beyond application of the fare proration formula set forth in 56 Comp. Gen. 209 (1977). The dollar amount determined under that formula reflects revenues lost by U.S. air carriers as a result of improper or indirect travel. Because a portion of that amount represents Government revenues diverted to a rail carrier, for which there is no penalty, the rail fare of \$46.44 is subtracted from the amount of revenues lost by U.S. air

B-194057

carriers to determine the amount of revenues lost as a result of the traveler's use of foreign air carriers. The following calculation is set forth as a matter of clarification:

Authorized route - Vancouver to Portland

	Date	City	Time	Flight No.	Fare
Lv	9/17/78	Vancouver	7:40a	UA404	
Ar	"	Chicago	1:30p		
Lv	"	Chicago	2:20p	UA216	
Ar	"	Boston	5:30p		
Lv	"	Boston	6:43p	DL518	
Ar	"	Portland	7:15p		
					<hr/>
				Fare payable by Government	\$265.52

Actual route - Vancouver to Portland

	Date	City	Time	Flight No.	Fare
Lv	9/15/78	Vancouver	4:00p	CP Rail	
Ar	9/16/78	Calgary	1:15a		\$ 46.44
Lv	9/17/78	Calgary	11:15a	AC836	
Ar	"	Chicago	3:15p		93.42
Lv	"	Chicago	4:45p	TW220	
Ar	"	Boston	7:54p		99.00
Lv	"	Boston	8:50p	CL422	
Ar	"	Portland	9:22p		29.00
					<hr/>
				Through fare paid	\$267.86

B-194057

Step 1. Revenues Diverted from U.S. Air Carriers

Sum of certificated carrier segment fares authorized	x	Fare payable by Government
<u>Sum of all segment fares authorized</u>		
minus		
Sum of certificated carrier segment fares traveled	x	Through fare paid =
<u>Sum of all segment fares traveled (including rail)</u>		
$\frac{\$265.52}{\$265.52} \times \$265.52 - \$99 + \$29 \times \frac{\$267.86}{\$267.86} =$		
$1 \times \$265.52 - .48 \times \$267.86 =$		
$\$265.52 - \$128.57 = \underline{\$136.95}$		

Step 2. Revenues Diverted to Foreign Air Carriers

Revenues diverted from U.S. air carriers

minus

Revenues diverted to rail carrier =

$\$136.95 - \$46.44 = \$90.51$

R. F. Keller
Deputy Comptroller General
of the United States