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DECISION

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

[Claim for Reimbursement of Travel Expenses With Foreign Air Carrier]

FILE: B-193893 DATE: September 27, 1979

MATTER OF: Leslie H. Black - Fly America Act - penalty and temporary quarters subsistence expenses

DIGEST: 1. Employee who transferred to Korea in May 1975, indirectly routed his travel by way of Paris and used foreign airlines for all or a portion of his travel may be reimbursed for constructive air fare without penalty for travel by foreign air carrier. For the period following enactment of 49 U.S.C. 1517 but prior to the issuance of guidelines on June 17, 1975, we have not penalized employees for use of foreign air carriers unless an agency regulation specifically requires the assessment of a penalty.

2. Army employee who occupies temporary quarters for a 53-day period upon being transferred from Korea to Fort Sheridan, Illinois, claims reimbursement for the period beyond 30 days. Claim may not be allowed as 5 U.S.C. 5724a expressly limits reimbursement for temporary quarters to 30 days except where employee transfers to or from Alaska, Hawaii, the territories or possessions of the United States, Puerto Rico or the Canal Zone for which an additional 30-day reimbursement may be allowed.

By letter dated November 21, 1978, Mr. Leslie H. Black, a civilian employee of the Department of the Army, has appealed our Claims Division's September 26, 1978 settlement which denied his claim for reimbursement of expenses incurred for travel by foreign air carrier incident to his transfer from Fort Sheridan, Illinois, to Waegwan, Korea. In addition, he appeals the denial of his claim for temporary quarters subsistence expenses in excess of 30 days incident to his subsequent transfer from Waegwan, Korea to Fort Sheridan.

Upon review, we sustain our Claims Division's disallowance of Mr. Black's claim for additional reimbursement for temporary quarters subsistence expenses. However, we find that Mr. Black may be reimbursed for the constructive cost of his and his wife's travel to Korea without penalty for travel by foreign air carrier.

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Claim for Travel Expenses

On March 25, 1975, Mr. Black was authorized travel and transportation expenses for himself and his wife incident to his transfer from Fort Sheridan, Illinois, to Waegwan, Korea, in May 1975. The usually traveled route from Fort Sheridan to Korea is by way of either Travis, Air Force Base, California, or Seattle, Washington. Service by U.S. air carrier is available by either routing. Instead, Mr. Black and his wife flew from JFK International Airport in New York City to Paris, France on May 1, 1975. He remained in Paris on leave until May 9, 1975, when he flew to Korea. While the record clearly indicates that Mr. Black and his wife used a foreign air carrier between Paris and Korea, there is some confusion as to whether they traveled by U.S. or foreign air carrier between New York and Paris. Mr. Black has stated that they traveled by U.S. air carrier for that portion of the journey. However, we have been advised by the Army Finance and Accounting Center that copies of airlines tickets that should resolve any doubt in the matter were not forwarded by the certifying officer as attachments to Mr. Black's travel voucher.

Mr. Black appears to have been assessed a penalty of approximately one-half the MAC fare for travel directly to Korea. On the basis of the record before us we are unable to verify the correctness of that penalty amount. Under the computational principles set forth at 56 Comp. Gen. 209 (1977), the penalty should equal the total MAC fare in the event foreign air carriers were used between New York and Paris as well as between Paris and Korea. If a foreign air carrier was used only between Paris and Korea, it does not appear that any penalty would be required. Under the formula, U.S. air carriers would be deemed to have received about 30 percent of the air fare of approximately $1,900 paid by Mr. Black, or $570. Since the record indicates that the MAC fare that was payable for their direct travel to Korea, and hence the revenues that should have been received by U.S. air carriers, did not exceed $570, there is no basis to assess a penalty for the employee's travel by foreign air carrier.

While we would ordinarily request further information from the Army to clarify the record, in this particular case, the matter may be resolved in Mr. Black's favor on the basis of the record available. Section 5 of Public Law No. 93-623, 88 Stat. 2104, commonly referred to as the Fly America Act, was enacted on January 3, 1975. That section, now contained at 49 U.S.C. 1517, requires the Comptroller General to disallow expenditures

from appropriated funds for travel by foreign air carriers in the absence of proof of the necessity therefor. Until the Comptroller General's guidelines for implementation of the Fly America Act, B-138942, were issued on June 17, 1975, there was no specific directive as to the circumstances under which U.S. air carrier service would be deemed available.

Mr. Black's travel occurred in May 1975, after the law was enacted but before guidelines had been issued. The language of the Act itself provides little assistance to agencies in determining when an employee should be penalized for travel by foreign air carrier. For this reason and because of documentation problems such as are involved in Mr. Black's case, employees need not be penalized for travel prior to June 17, 1975, in the absence of agency regulations specifically requiring the assessment of a penalty. In the case of the Department of Defense, Volume 2 of the Joint Travel Regulations (JTR) were not amended until July 1, 1975, to reflect enactment of the Fly America Act and paragraph C6204 as in effect prior to that date did not require assessment of a penalty or disallowance of air fare for unjustified travel by foreign air carriers. Accordingly, we hold that Mr. Black may be reimbursed for travel to Korea based on the constructive air fare without penalty for his use of a foreign air carrier for all or a portion of his travel by indirect route. That portion of the Claims Division settlement holding to the contrary is overruled.

Claim for Temporary Quarters

The record shows that Mr. Black was transferred from Waegwan, Korea, to Fort Sheridan, Illinois, in May 1977. He and his dependents occupied temporary quarters in the Fort Sheridan area from June 19, 1977, through August 10, 1977. He has been allowed temporary quarters subsistence expenses (TQSE) for the 30-day period through July 18, 1977. However, he has claimed TQSE for the additional 23-day period through August 10, 1977, based on the fact that he and his family were unable to occupy their residence until it was vacated by a tenant on September 30, 1977. Our Claims Division disallowed his claim on the basis that there is no authority to pay TQSE for a period in excess of 30 days.

The authority for entitlement to subsistence expenses while occupying temporary quarters is found at 5 U.S.C. 5724a(a)(3) which expressly provides that reimbursement for temporary quarters is limited to a period of 30 days except when the employee "moves to or from Hawaii, Alaska, the

territories or possessions, the Commonwealth of Puerto Rico or the Canal Zone", an additional 30-day reimbursement may be allowed. Volume 2, JTR, para. C13001-2, in effect at the time of Mr. Black's transfer, contained the same authorization and limitations.

In view of the above limitation on the period of reimbursement for occupancy of temporary quarters and as Mr. Black transferred from a foreign post to a duty station in Illinois, there is no basis upon which to allow his claim for TQSE for an additional 23 days. 55 Comp. Gen. 1107 (1976). Accordingly, this portion of our Claims Division's disallowance is sustained.

Deputy Comptroller General
of the United States