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**DECISION**



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

*Entitlement to Travel Expense Reimbursement Based on*

FILE: B-195463

DATE: December 26, 1979

MATTER OF: Sally M. Walker - Fly America Act - Rest stop selection *Provision of Fly America Act*

DIGEST: ( Employee of Department of State traveled by foreign air carrier from Lagos, Nigeria, to London, England, and completed travel from London to United States aboard United States air carriers. Although rest stop in London was improper under rest stop selection principles set forth in Sulak, 57 Comp. Gen. 76 (1977), and resulted in reduced use of United States air carrier service available directly from Lagos, employee may be reimbursed for air fare to Washington, D.C., without penalty since travel predated the issuance of Sulak decision on November 14, 1977. See Arn, B-192548, April 18, 1979. 32

Ms. Sally M. Walker requests reconsideration of her claim for reimbursement of certain travel expenses which were disallowed in accordance with the authority contained in section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 1517, commonly referred to as the Fly America Act.

Ms. Walker was authorized Government-financed travel from Lagos, Nigeria, to Washington, D.C., in July 1977 for consultation en route to home leave. During the period in question, United States air carrier service was available originating in Lagos and flying direct to the United States, with departures on Monday, Thursday, and Saturday each week. Ms. Walker traveled from Lagos to London, England, on Thursday July 22, 1977, aboard a foreign air carrier, connecting in London with United States air carrier service direct to Washington, D.C. Ms. Walker justified her utilization of the foreign air carrier service to London as the shortest and most direct route to include a rest stop. Ms. Walker thus contended that her right to an authorized rest stop permitted her to schedule foreign air transportation without strict adherence to Fly America Act principles.

The Budget and Management Officer at the American Embassy in Athens, Greece, refused to accept the justification offered for the foreign air transportation and subsequently deducted \$364.67 from

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Dept. State: *US Embassy Athens, Greece*

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the amounts otherwise due Ms. Walker. Since she had received a travel advance of \$575, the deduction resulted in a billing to her of \$236.20 to clear her advance account. This action was reviewed by the Committee on Exceptions to the Foreign Service Travel Regulations which determined that, while employees should be granted rest stops in appropriate situations, Ms. Walker's claim was controlled by that portion of Volume 6 of the Foreign Affairs Manual (6 FAM) section 134.2b which states that when the point of origin of travel is outside the United States and American flag carriers provide service, this service must be used. The Committee concluded that there was no authority for Ms. Walker's travel by foreign air carrier service via London. P3529

Subsequently, in Settlement Certificate No. Z-2799741, dated February 13, 1979, our Claims Division disallowed Ms. Walker's claim finding that the agency had correctly applied the controlling regulations.

Ms. Walker's request for reconsideration again places in issue the propriety of her rest stop entitlement and her scheduling of travel to permit such a rest stop. In addition, Ms. Walker questions whether, under the circumstances of her travel in July 1977, rest stops were allowed in the continental United States.

Ms. Walker's entitlement to a rest stop during authorized travel from Lagos, Nigeria, to Washington, D.C., was governed by the following provisions of 6 FAM 132.4:

"Any scheduled flights in excess of 14 hours on a usually traveled route, including scheduled stopovers of less than 8 hours, when traveling by less than first-class accommodations, may be interrupted for a rest period of not to exceed 24 hours. The point of interruption should be midway in the journey or as near to it as the schedule permits. Per diem and necessary miscellaneous expenses are authorized. Rest stops are not authorized when travel is performed by an indirect route."

(Emphasis added.)

The clear distinction between a "usually traveled route" and an "indirect route" controls Ms. Walker's entitlement to a rest stop in the first instance, and as a result, her subsequent entitlement to reimbursement for her scheduled travel in the case presented.

In accordance with 6 FAM 132.4, supra, the rest stop is required to be along a usually traveled route. The definition of a "usually traveled route" is set forth at 6 FAM 117v as follows:

"v. Usually Traveled Route

" One or more routes which are essentially the same in cost to the Government and in travel time. Selection of usually traveled routes will depend on the authorized mode or combination of modes, and is subject to the provisions of sections 133 and 134 restricting use of foreign carriers."

Thus, the question of proper rest stop selection depends upon the proper selection--in the first instance--of one or more usually traveled routes. This principle is consistent with our decision in Matter of the Fly America Act - selecting between flight schedules, 55 Comp. Gen. 1230 (1976), in which 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. Also, where an origin or interchange point is not served by a certificated carrier, noncertificated service should be used from origin to the nearest practicable interchange point on a usually traveled route to connect with certificated service.

In an analogous case, Matter of Michael A. Sulak, 57 Comp. Gen. 76 (1977), we applied the principles set forth in our decision in 55 Comp. Gen. 1230, supra, to the issue of rest stop selection. We reasoned in part as follows (57 Comp. Gen. 76, at 81):

"\* \* \* Where an origin or interchange point is not served by a U.S. air carrier, noncertificated service is to be used to the nearest practicable interchange point to connect with certificated U.S. air carrier service. In general, a rest stop should be taken along a routing selected in accordance with these principles. Based on practical considerations such as availability of suitable accommodations and reliability of connecting service, an agency may determine that a particular city along a routing selected in accordance with our holding in 55 Comp. Gen. 1230, nevertheless, is not an appropriate rest stop location. In such cases, the employee's rest stop should be designated at an appropriate location along the alternate routing that otherwise most nearly complies with the route selection principles set forth in that decision. Thus, the selection of a rest stop is no longer an unfettered prerogative of the traveler, inasmuch as selection made in disregard of the policy of 49 U.S.C.

§ 1517 may result in the traveler's personal liability in accordance with our holding in 56 Comp. Gen. 209, supra. However, as noted in 55 Comp. Gen. 1230, travelers will not be held accountable for nonsubstantial differences in distances served by certificated carriers."

In the Sulak case we also recognized that decisions of this Office have expanded the definition of a "usually traveled route" contained in 6 FAM 117v, supra, in terms of equivalent cost and traveltime. However, the clear purpose of the expanded definition was to permit flexibility where additional cost and traveltime would facilitate greater use of certificated air carrier service. In the present case, where the routing selected involved an increased cost differential while substantially reducing the utilization of certificated air carrier service, we believe the routing may not be regarded as a "usually traveled route." See Sulak supra. Therefore, Ms. Walker's scheduled travel from Lagos to London constituted an "indirect" as opposed to a "usually traveled" routing.

As we have noted, 6 FAM 132.4 precludes any entitlement to a rest stop when travel is performed by an indirect route. In view of this fact, it is clear that Ms. Walker's new evidence on the issue of the nonsuitability of rest stops in the continental United States does not control the decision on her claim for reimbursement of the specified travel expenses. Under 6 FAM 131.2 all official travel is required to be performed by a usually traveled route. Where a traveler, such as Ms. Walker in this case, deviates from a usually traveled route, she is required to bear the additional cost in accordance with the provisions set forth in 6 FAM 131.3. See Sulak, supra; Matter of Herbert L. Woods, B-183998, January 26, 1976; and B-171969, April 14, 1972.

However, this Office also recognized in the Sulak case that proper rest stop selection is, in large part, a matter of travel administration. This reasoning has resulted in part in the further recognition by this Office that strict adherence to the regulatory construction embodied in the Sulak case may produce an overly punitive result in circumstances -- such as those presented by Ms. Walker's case -- where the construction postdates the scheduling of travel by an otherwise uninformed and unsuspecting traveler. To mitigate against such an inequitable result, we have determined that the rest stop selection principles enunciated in the Sulak decision need not be applied to travel, such as Ms. Walker's, that occurred prior to November 14, 1977, the date the Sulak decision was issued. Matter of Geoffrey Arn, B-192548, April 18, 1979.

Thus, while it should be recognized that Ms. Walker's decision to schedule her travel to provide a rest stop in London contravenes presently applicable rest stop selection principles her air fare from Lagos to Washington may be reimbursed without penalty for use of a foreign air carrier between Lagos and London because her travel was performed before November 14, 1977, the date of the Sulak decision.

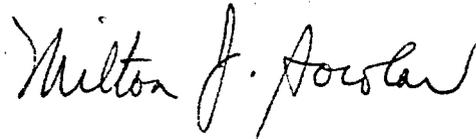
Finally, Ms. Walker's question concerning the suitability of rest stops in the continental United States, while not integral to the decision in her case, may be answered by further reference to our decision in Sulak. In that decision we concluded with the following reasoning (57 Comp. Gen. 76, at 81-82):

"We believe that there is one other aspect of rest stop selection that requires clarification. The Department of State's regulation provides that the rest stop 'should be midway in the journey or as near to it as the schedule permits.' See 6 FAM 132.4. We recognize that particularly in the instance of travel between the United States and Africa, the distance between the two continents makes it impossible in many cases to select a rest stop that is anywhere near midway in the journey and still schedule the travel aboard U.S. air carriers to the extent required by 49 U.S.C. § 1517. However, we believe that in most cases of travel to and from Africa an adequate rest stop can be provided making proper use of U.S. air carriers, as long as neither the portion of the journey preceding the rest stop nor the portion remaining requires travel of more than 14 hours. Ordinarily, where a rest stop cannot be provided at a point near to midway in the journey, the traveler can be permitted additional rest at destination under 6 FAM 132.5, or, where travel aboard U.S. air carriers between the hours of midnight and 6 a.m. is involved, under the authority of 56 Comp. Gen. 629 (1977). Where a rest stop can only be scheduled so near to the point of origin or destination that it cannot serve its intended purpose, it may be eliminated altogether insofar as the traveler is authorized an appropriate period of rest at destination."

Therefore, Ms. Walker would have been entitled to an appropriate period of rest at her destination in Washington, D.C., in the event

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that each available rest stop in the continental United States was deemed so near to the destination that it could not purposefully serve as an authorized rest stop.

A handwritten signature in cursive script, reading "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name.

For the Comptroller General  
of the United States