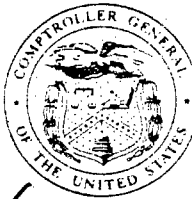


DECISION



Dempster
GGM
**THE COMPTROLLER GENERAL
OF THE UNITED STATES** *14477*

WASHINGTON, D.C. 20548

*[Claim for Reimbursement of Transportation Expenses
Involving Foreign Air Carrier]*

FILE: B-194779

DATE: August 5, 1980

MATTER OF: Colonel Nicholas S. Kotas - Fly America
Act - Traveler's Liability

DIGEST: Member who obtains passage aboard foreign air carrier for transoceanic flight when certificated U.S. carrier is available, is in violation of Fly America Act and is personally liable for cost. The requirement to fly aboard certificated carriers is not a mere "policy." The act is a mandatory statutory provision with respect to which Government travelers are deemed to be on notice. Traveler's preference or convenience does not determine availability. Moreover he has a duty to comply with the Act and he may not defeat its purpose and avoid liability by scheduling travel at his discretion.

This action derives from an appeal of our Claims Division's Settlement Certificate, dated March 15, 1979 (Z-2809712) which denied the claim of Colonel Nicholas S. Kotas, a member of the United States Army. The claimant seeks reimbursement of air transportation expenses incident to his use of a foreign air carrier, from Frankfurt, Germany, to the United States during October 1977. We sustain the denial of Colonel Kotas' claim for the reasons stated below.

The record shows that Colonel Kotas, accompanied by his wife, was assigned to a post as Defense Attache' in Sofia, Bulgaria. While there he received orders to report to a new duty station in the United States, whereupon he promptly began to make travel arrangements for himself and his wife. There were no military Transportation Officers in Bulgaria from whom he could have received expert assistance or guidance in planning his travel. His orders contained no special travel instructions. Thus, it was clearly expected that Colonel Kotas would use his own initiative and resources to plan his travel from Bulgaria to the United States.

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The arrangements, Colonel Kotas made to travel from Sofia to Frankfurt, Germany, aboard Balkan Airlines, a non-certificated carrier, were proper, inasmuch as United States registry (certificated) carriers did not provide service to Bulgaria. Therefore, he was reimbursed for the expenses he incurred during that leg of the trip. However, while Colonel Kotas was in Bulgaria he also made advance reservations and purchased passage for a Lufthansa flight from Frankfurt to the United States. For this leg of the trip he was not reimbursed travel expenses because it was determined that certificated U.S. carriers were available in Frankfurt. Colonel Kotas seeks reimbursement for the expenses incurred on his flight from Frankfurt to the United States.

Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 1517), the so-called Fly America Act, forbids the expenditure of appropriated funds for Government-financed foreign air travel aboard "non-certificated" air carriers if "certificated" U.S. carriers are available. The statute further 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 certificate under section 1371 of this title * * *."

The provisions of the Fly America Act pertaining to Military personnel, and in effect during Colonel Kotas' travel, are implemented by paragraph M2150, Volume 1, Joint Travel Regulations (1 JTR) (change 294, August 1, 1977). The regulations provide for the use of non-certificated carriers only when service by a certificated air carrier is unavailable.

In his original claim, dated November 29, 1977, Colonel Kotas asserts that the disordered circumstances, surrounding his transfer from Bulgaria, to the United States, through no fault of his own, complicated the task of arranging travel; a task for which he had no expertise. Additionally, Colonel Kotas contends;

"[F]rom my limited understanding of the regulations, the Transportation Officer can make an exception to policy (i.e., use a foreign carrier under certain circumstances); therefore in the absence of any transportation expertise, I believe that I-as the Defense Attache'-was authorized to act as the Transportation Officer and did, in fact, authorize the above action, under the prevailing circumstances." (Emphasis supplied.)

While it is conceded that the circumstances surrounding Colonel Kotas' departure from Bulgaria were not propitious, we must note that the requirement to fly aboard certificated carriers is not in the nature of a mere "policy." The Fly America Act is a mandatory statutory provision with respect to which Government travelers are deemed to be on notice. Arnold J. Jacobius, B-186007, November 15, 1979. The penalty for non-compliance with the Fly America Act is the personal liability of the traveler for the expense of the non-certificated air carrier. Catherine Benton, B-188968, October 17, 1978; Chief Warrant Officer, Micheal R. Dunkin, B-187840, April 5, 1977. Moreover the traveler may not be relieved of personal liability because of ignorance of the law or because others made travel arrangements for him. H. J. Otway, B-193805, June 15, 1979; Robert A. Young, B-192522, January 30, 1979.

When certificated carriers are unavailable the Fly America Act permits the traveler to proceed aboard a non-certificated carrier only as far as the nearest practicable interchange point where certificated service is available. 55 Comp. Gen. 1230 (1976). The determination of availability or unavailability must be made in accordance with the explicit provisions of paragraph 3, 1 JTR. The traveler's preference or convenience does not determine the availability of certificated air carriage. Robert A. Young, above.

Colonel Kotas further states that he:

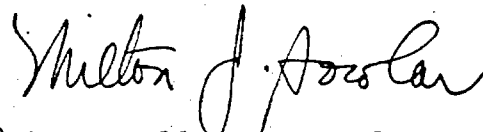
"made arrangements for a short six day leave in Europe and booked the fastest and

B-194779

most direct flight from Frankfurt to California as I had to coordinate personal affairs there * * * and the Lufthansa flight from Frankfurt to Los Angeles was the only means by which I could obtain any reasonable time to settle personal affairs * * *." (Emphasis supplied.)

Thus, the record reveals that Colonel Kotas decided to purchase his through tickets in Bulgaria where certificated air carriage was unavailable rather than waiting to arrange for a certificated flight at the nearest practicable interchange point. This is so even though Colonel Kotas was on leave in Europe and would have had an opportunity to make the necessary arrangements. He also decided not to transfer from the non-certificated carrier to a certificated carrier once he arrived in Frankfurt. Each of these decisions were founded on reasons of personal preference. Therefore, Colonel Kotas did not comply with the Fly America Act, and he must bear personal liability for the expenses he incurred.

Accordingly, we sustain the denial of Colonel Kotas' claim for reimbursement of travel expenses incident to his flight from Frankfurt, Germany, to the United States aboard a non-certificated U.S. carrier.



For the Comptroller General
of the United States