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DECISION



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

FILE: B-198872

DATE: February 20, 1981

MATTER OF: Lieutenant Commander Gary J. Angelopoulos -
Travel by Foreign Air Carrier

DIGEST:

Where record indicates United States certificated aircraft was available for travel to intermediate destination, even though such routing would involve change in member's travel plans, payment of travel expenses is barred by International Air Transportation Fair Competitive Practices Act. Furthermore, incurrence of cost by member due to erroneous advice by travel officer does not provide legal basis for reimbursement.

This Decision is in response to a request for an advance decision by the Per Diem, Travel and Transportation Allowance Committee (PDTATAC) as to whether it would be legal to pay part of a claim for Transportation Expenses. The request has been assigned PDTATAC Control No. 80-18. 304

For the following reasons, we conclude that payment of travel expenses is not allowed where the record indicates that a United States certificated aircraft was available for travel to an intermediate destination. Furthermore, incurrence of cost due to erroneous advice by a travel officer does not provide any legal basis for reimbursement.

Following his arrival at his new permanent duty station, U.S. Naval Communication Station Harold E. Holt, Exmouth, Western Australia, on January 18, 1979, Lieutenant Commander (LCDR) Gary J. Angelopoulos submitted travel voucher No. 50223 which requested reimbursement for commercial air tickets purchased at personal expense for himself and his family. The routing of LCDR Angelopoulos and family was from San Francisco to Honolulu via Northwest Orient Airlines, from Honolulu to Sydney via Quantas, from Sydney to Perth via Ansett Airlines, and from Perth to Learmonth

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B-198872

via MacRobertson Miller Airlines. The Disbursing Officer has made payment for all entitlements which are not in doubt, but has withheld payment for the leg of the trip from Honolulu to Sydney on Quantas, a foreign flag carrier, because a United States - flag carrier was available.

During a personal interview, LCDR Angelopoulos stated that initial flight bookings aboard United States - flag carriers made by the transportation office of the United States Naval Post Graduate School were cancelled by Pan American World Airways due to flight changes accompanying the deregulation of United States air carriers. He further stated that he made additional flight arrangements through the United States Naval Post Graduate School for travel aboard a foreign flag carrier on the advice of travel personnel who informed him that reimbursement would be on the basis of Government cost and that the airline used was immaterial to reimbursement. The foreign flag carrier involved here, Quantas, was used in order to maintain a prearranged travel schedule for which hotel deposits had been made.

Title 37 of the United States Code sections 404 and 406 (1976) provides for reimbursement for travel expenses in case of a permanent change of station, for a member and his dependents, respectively. However, section 5 of the International Air Transportation Fair Competitive Practices Act, 49 U.S.C. § 1517 (1976), provides, in pertinent part, that transportation of persons by air between a place in the United States and place outside thereof shall be provided by air carriers holding certificates under section 1371 of that title (United States certificated carriers) provided such a carrier is available. The statute further provides:

"* * * The Comptroller General of the United States shall disallow any expenditure from appropriated funds for payment for such personnel or cargo transportation on an air carrier not holding a certificate under section 1371 of this title * * *."

B-198872

In this regard paragraph M-2150, Volume 1, Joint Travel Regulations (1 JTR) (change 308, October 1, 1978) which was in effect during the period of the member's travel, specifically provided that aircraft certificated under 49 U.S.C. § 1371 be used for all commercial foreign air transportation when available. Also, for dependent travel paragraph M-7000 1 JTR (change 311, January 1, 1979) then provided that members of the uniformed services are entitled to transportation of dependents upon a permanent change of station except for any portion of travel performed by a foreign registered vessel or airplane if American registered vessels or airplanes are available by the usually traveled route.

In the instant case, however, the record submitted by the Navy clearly indicates that a certificated aircraft was available. Indeed, it is noted that LCDR Angelopoulos could have flown directly from Los Angeles to Sydney rather than from San Francisco to Sydney with a stopover and change of airlines in Honolulu. LCDR Angelopoulos has not disputed these conclusions.

Since a certificated aircraft was available, there is no basis in the law or regulations for allowing this claim. A government traveler is deemed to be on notice of the requirements of 49 U.S.C. § 1517 (1976) and its regulations. Colonel Nicholas S. Kotas, B-194229, August 5, 1980; Arnold J. Jacobius, B-186007, November 15, 1976. Furthermore, the incurrence of cost by a person because of the erroneous advice of travel officers does not provide a legal basis for reimbursement. It is well settled that the Government cannot be bound by the erroneous acts of its officers, agents or employees, even though committed in performance of their official duties. 58 Comp. Gen. 240 (1979); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); German Bank v. United States, 148 U.S. 573 (1893).

We find no basis, therefore, for reimbursement of the member's and his dependents' travel from Honolulu to Sydney, Australia.

Milton J. Fowler

Acting Comptroller General
of the United States