

**DECISION**



19158 Bluteh  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-199957

**DATE:** August 17, 1981

**MATTER OF:** Teofil Swiontek - Fly America -  
Travel Agent

- DIGEST:**
1. Where agency confirms fact that it was essential to mission of the agency that employee report for temporary duty at specific time, and no American air carrier provided the necessary service, use of a foreign air carrier for trip to temporary duty location does not violate Fly America Act. An agency determination that an American air carrier cannot meet its transportation needs will not be questioned by this Office unless arbitrary or capricious. 59 Comp. Gen. 66 (1979).
  2. Although use of foreign air carrier is justified for trip to temporary duty location, employee incurred penalty for use of foreign air carrier for return trip, to be computed under formula in 56 Comp. Gen. 209 (1977), in the absence of satisfactory proof of the necessity therefor.
  3. Employee was unaware of restrictions on use of travel agents and agency allowed him to obtain his own transportation. To the extent otherwise allowable employee may be reimbursed for airline tickets purchased from a travel agent in an amount not to exceed the cost of transportation if purchased directly from the carrier. 59 Comp. Gen. 433 (1980).

Denial of Claim for Cost of Air Fare Involving Foreign Air Carrier

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This is an appeal from the settlement dated March 18, 1980, of our Claims Group denying the claim of Mr. Teofil Swiontek. He seeks reimbursement for the cost of air fare to and from his temporary duty location. Reimbursement was denied because he purchased the ticket from a travel agent and because of the restrictions on the use of foreign air carriers imposed by the Fly America Act, 49 U.S.C. 1517. This Act prohibits the expenditure of Government funds for transportation on foreign air carriers in the absence of satisfactory proof of the necessity therefor. B-138942, March 12, 1971.

The facts are as follows. Mr. Swiontek is a civilian employee of the U.S. Army Tank-Automotive Materiel Readiness Command at Warren, Michigan. In July 1978, he was assigned to temporary duty in Heidelberg, Germany, for 60 days. He had minimum advance notice and it was essential that he report for duty at 9 a.m. Monday, July 10, 1978. If purchased directly from an American air carrier, his transportation would have cost the Government \$978, and Mr. Swiontek could not have reported for duty at 9 a.m. Monday. (The American carrier did not offer weekend flights.) Accordingly, the agency advanced Mr. Swiontek \$600 and he purchased a ticket through a travel agent on a foreign air carrier for \$512. Use of the foreign carrier permitted him to report for duty at 9 a.m. on Monday, and saved the Government \$466.

The agency confirms the fact that it was essential to the mission of the agency that Mr. Swiontek report for duty at 9 a.m. Monday, and that no American carrier would have provided the weekend service required. This is satisfactory proof of the necessity for the use of a foreign air carrier for the trip to Heidelberg. An agency's determination that American carriers cannot serve its transportation needs will not be questioned by this office unless it is arbitrary or capricious. 59 Comp. Gen.

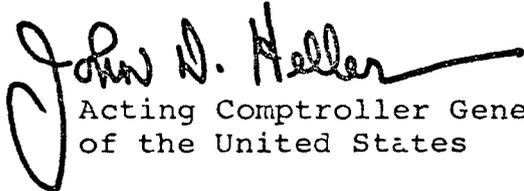
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66 (1979). Accordingly the outbound travel to the temporary duty location on a foreign carrier did not violate the Fly America Act.

However, the record contains no satisfactory proof of the necessity for the use of a foreign air carrier for the return travel. In the absence of such proof Mr. Swiontek's failure to use an American air carrier for this portion of his trip was a violation of the Fly America Act and imposed upon him a penalty to be computed in accordance with the formula prescribed in 56 Comp. Gen. 209 (1977). The fact that the American carrier's fares were higher than those of the foreign carrier does not justify the use of the latter. B-138942, supra.

As to the use of a travel agent to purchase the ticket, we note that the agency recommends payment, pointing out that the claimant was allowed to obtain his own transportation and was not aware of the regulations restricting use of travel agents until his claim was denied. Under these circumstances, we have held that an employee may be reimbursed an amount not exceeding the cost of transportation if it had been purchased directly from the carrier. B-103315, August 1, 1978; 59 Comp. Gen. 433 (1980). This holding has since been incorporated into Paragraph C2207-4 of the Joint Travel Regulations, Volume II (Change 180, October 1, 1980).

Therefore, the use of a travel agent is not a bar to payment of an amount not to exceed the cost of the transportation if purchased directly from the carrier. If this amount exceeds the penalty Mr. Swiontek incurred under the formula in 56 Comp. Gen. 209, he may be reimbursed the difference. If, on the other hand, the amount payable is less than the penalty, he is indebted to the Government for the difference.

  
Acting Comptroller General  
of the United States