118817 Comptroller

DECISION

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

FILE: B-205206 DATE: June 28, 1982

MATTER OF: Daniel Bienstock

DIGEST: 1. Applicable regulations provide that travel agents generally may not be used to procure transportation for the Government where purchases can be made directly from American air carriers. However, the procurement of transportation through group or charter arrangements made by travel agents for employees traveling on official business between points in the United States and points in foreign countries may be permitted upon an administrative determination that it would result in substantial savings over the costs of regular individual air carriage. Thus, an employee of the Department of Energy who was invited to visit the People's Republic of China as a member of a committee of energy experts, would not be precluded from being reimbursed for his travel because he used the services of the same travel agent who had been employed by the other group members if the agency finds that substantial savings were realized thereby.

2. An employee of the Department of Energy who was invited to visit the People's Republic of China as one of a group of energy experts from the United States must abide by the Fly America Act requirement to travel aboard an American air carrier when available. The agency has not determined, and the facts presented do not establish, that the employee's mission would not have been accomplished without use of the foreign carrier or that an American carrier was not available. Thus, the employee is liable for the expense of his journey to and from China.

An authorized certifying officer of the Department of Energy has requested a decision on whether an employee of that agency, Mr. Daniel Bienstock, may be reimbursed for air passage expenses he incurred in traveling aboard a foreign flag air carrier between the United States and

the People's Republic of China. For the reasons set forth below we conclude that Mr. Bienstock is not entitled to reimbursement for the portion of his trip which took him from New York to China and return.

The employee and eight other American energy experts were invited to visit China as a group for the purpose of exchanging technical information. Travel arrangements to and from China were made for the entire group by one of the group members. These arrangements entailed a flight aboard Japan Air Lines from New York to China and return which had been booked through Kuo-Feng Corporation, a travel agency in New York City.

The certifying officer questions the propriety of paying for the employee's travel between New York and China for two reasons: (1) the employee's travel was arranged through a travel agent, and (2) the employee traveled aboard a foreign flag air carrier. Under our regulation, 4 C.F.R. § 52.2, which is premised in part on the so-called Fly America Act, the use of American air carriers is required for Government-financed passenger transportation when such carriers are available. Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended by Public Law 96-192, § 21, February 15, 1980, 94 Stat. 43, 49 U.S.C. § 1517. Further, 4 C.F.R. § 52.3 provides that travel agents generally will not be used where purchases can be made directly from American air carriers.

The use of a travel agent was approved for the arrangement of group travel between the United States and the People's Republic of China in B-103315, October 2, 1977, citing 47 Comp. Gen. 204 (1967). In the 1977 decision, we observed that the use of travel agents generally was authorized where it could be administratively determined that group travel arrangements made by travel agencies offer substantial savings over regular air fares between points in the United States and points in foreign countries. In such instances, Government Transportation Requests are not to be used, and transportation costs are to be paid by the traveler, who may claim reimbursement. Since Mr. Bienstock claims that his travel arrangements to China were made through the travel agency at a "considerable cost savings," it would be permissible for

appropriate Department of Energy officials to approve his use of a travel agent if they concur that substantial savings were realized thereby.

Even if an employee's use of a travel agent is approved by his agency, the requirement to use American air carriers when available must still be observed. We have specifically recognized that an employee may not be relieved of liability for improper travel by a foreign air carrier merely because he relied on the erroneous advice or assistance of others. In Matter of Jaspal and Goode, B-202599, September 29, 1981, 60 Comp. Gen. ___, we stated:

> "Because the requirement for the use of U.S. air carriers is imposed directly by statute, all persons are charged with knowledge of it. Catherine Benton, B-188968, August 8, 1977. For this reason and because Government funds may not be used to pay for unnecessary travel by foreign air carrier, we have held that the traveler is personally liable for any costs incurred because of his failure to comply with this requirement. He is not relieved of this responsibility merely because he relied upon the advice or assistance of others in arranging his travel. See B-189711, January 27, 1978, and Robert A. Young, B-192522, January 30, 1979."

We have been advised that there were United States air carriers available to transport the employee from the United States to China which could have served Mr. Bienstock's agency's needs. There is no indication in the record before us that, prior to his travel, consideration was given by Mr. Bienstock or his agency to his use of United States carriers. However, subsequent to his travel Mr. Bienstock stated in this regard:

> "If I had separated myself from the group and independently took a U.S. carrier, I would have been out-of-time sequence with the committee and ran the grave risk of not catching up with them. * * *"

Under our guidelines, it is within an agency's discretion to determine that foreign air carrier service is necessary if a United States air carrier otherwise available cannot provide the foreign air transportation needed or if use of such service will not accomplish the agency's mission. Specific guidelines are laid down for making those determinations. Mere personal preference of the employee is not sufficient. Federal Travel Regulations (FPMR 101-7) para. 1-3.6 (November 1981). We note, however, that the agency has made no such determination in this case.

The Fly America Act imposes a nondiscretionary duty on the Comptroller General to disallow expenditures from appropriated funds for travel aboard foreign air carriers in the absence of satisfactory proof that it was necessary. Matter of Young, B-192522, April 22, 1981. Based on the record before us, appropriated funds may not be used to pay the cost of Mr. Bienstock's travel from the United States to China and return. Absent an agency determination that use of a foreign air carrier was necessary to accomplish the agency's mission, or proof of nonavailability of United States air carriers, the employee is personally liable for the costs of his air travel aboard the foreign-flag air carrier.

Harry R. Van Cleve
for Comptroller General
of the United States