

DECISION

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

*Smith
24656*

FILE: B-208513**DATE:** March 28, 1983**MATTER OF:** Mr. John King, Jr. - Reimbursement for
Use of Non-certificated Air Carrier

DIGEST: Under guidelines issued by the Comptroller General, reasons for use of foreign air carrier must be properly certified. Comptroller General decisions contain guidelines regarding the adequacy of reasons for utilizing a foreign carrier. The Joint Travel Regulations require a determination of unavailability by the transportation or other appropriate officer and the requirements contained therein are in keeping with the Comptroller General's guidelines and reimbursement is not authorized absent compliance.

This action is in response to a request for a decision from R. G. Bordley, Chief, Accounting and Finance Division, Office of the Comptroller, Defense Logistics Agency, concerning a claim for reimbursement by an employee for airfare paid for travel by foreign air carrier from New York City to Hamburg, Germany, during June 1979. The request, forwarded by the Per Diem, Travel and Transportation Allowance Committee, has been assigned PDTATAC Control No. 82-18. On the basis of the documentation presented for decision we conclude that the employee may not be reimbursed.

The record shows that John King, Jr. was directed to report for duty in Nuernberg, Germany, on June 28, 1979. Immediately upon receiving his orders on June 16, 1979, he went to the local Transportation Office at McConnell Air Force Base, Kansas, to determine the mode of travel. Mr. King was informed that military transportation would be unavailable on such short notice and that he would have to make his own travel arrangements. He states that he was not informed of any restrictions on reimbursement for travel performed on foreign air carriers. Moreover, he claims that the travel agency that made the arrangements was unable to get him a reservation on a certificated air

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carrier. Acting on the advice of an Army Finance and Accounting Center officer, Mr. King submitted a supplemental voucher which was honored with a reimbursement of \$236, representing the cost of travel from CONUS by Military Airlift Command. Mr. King now seeks reimbursement of the additional \$228 expended by him for airline transportation.

As a basis for favorably considering his request for reimbursement, we have been furnished a memorandum recommending reimbursement for the full fare unless someone can challenge the claimant's allegation that an American-flag carrier was unavailable and suggesting that paragraph C2206 of Volume 2 of the Joint Travel Regulations (2 JTR) permits payment for foreign air carrier transportation based on a traveler's certification that use of a foreign carrier was necessary.

We have held that a certificate by the traveler stating that his use of a foreign carrier was necessary because U.S. air carrier service was unavailable is not in itself sufficient to authorize reimbursement for the cost of his flight. Matter of Mitchell, B-203010, August 4, 1981. The "Fly America" provisions of 49 U.S.C. § 1517, prohibit this Office from allowing any expenditure from appropriated funds for transportation of personnel or cargo on a non-certificated foreign-flag carrier in the absence of satisfactory proof of its necessity. Our guidelines of March 12, 1976, which were in force at the time, required submission of a certificate or memorandum with each voucher for foreign air travel adequately explaining the reasons why certificated air carriers were unavailable. Those guidelines have been amplified in various decisions.

In keeping with the statute, and the Comptroller General's guidelines and decisions, paragraph C2204-2d of 2 JTR requires a determination by the transportation or other appropriate officer that certificated air carriers are unavailable. The determination of unavailability is required to be made in accordance with the standards set forth in 2 JTR para. C2204-2. That regulation reflects the Comptroller General's guidelines and decisions implementing the Fly America Act.

Consistent with our holding at 55 Comp. Gen. 1230 (1976), 2 JTR para. 2204-2e in effect at the date of Mr. King's travel provided that when U.S. air carriers do not offer through service between an employee's origin and destination, the traveler is required to use U.S. air carrier service available at origin to the furthest practicable interchange point on a usually traveled route.

In June of 1979 there was air carrier service to Nuernberg from more than two dozen cities in Europe. Since U.S. air carriers offered service between the United States and many of those European cities it is most unlikely that U.S. air carrier service was unavailable for the transoceanic portion of Mr. King's travel. Given the particular destination involved, Mr. King's statement that his travel agency tried but was unable to get U.S. air carrier reservations does not itself afford a transportation officer an appropriate basis to determine that U.S. air carrier service was unavailable under the standards set forth in 2 JTR para. C2204-2.

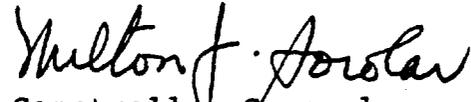
While the circumstances surrounding Mr. King's departure from the United States were less than optimum, we must note that the requirement to fly aboard certificated carriers is not in the nature of a mere "policy." The "Fly America Act" is a mandatory statutory provision with respect to which Government travelers are deemed to be on notice. Matter of Jacobius, B-186007, November 15, 1979. The employee is personally liable for noncompliance with the "Fly America Act." Matter of Benton, B-188968, October 17, 1978.

Moreover, the traveler may not be relieved of personal liability because of ignorance of the law or because others made travel arrangements for him. Matter of Otway, 58 Comp. Gen. 612 (1979); Matter of Young, B-192522, January 30, 1979, affirmed April 22, 1981.

Accordingly, Mr. King's claim is denied. His liability for improper travel by non-certificated air carrier should be computed on the basis of the

B-208513

formula set forth in 56 Comp. Gen. 209 (1977) and as much of the \$236 amount as is determined to have been improperly paid to Mr. King should be recovered.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States