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DECISION



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

FILE: B-209957

DATE: June 1, 1984

MATTER OF: Nelson P. Fordham

DIGEST:

Employee of the Navy used a foreign air carrier on a particular routing for one leg of his return travel from temporary duty overseas even though he could have used Military Airlift Command (MAC) chartered air service on another routing to the United States. Since MAC full plane charter services need not be considered as available U.S. air carrier under the Fly America Act and since the employee's use of a foreign air carrier was justified in the usual manner using only available commercial flights, no penalty for using foreign air carrier was appropriate. However, under applicable regulation reimbursement for return travel is limited to the constructive MAC cost. Upon reconsideration since new evidence showed that a penalty had been assessed an appropriate payment may be allowed to reimburse the employee's costs up to constructive MAC cost.

The claimant requests reconsideration of our decision of July 6, 1983, Nelson P. Fordham, 62 Comp. Gen. 512 (1983). We affirm the rule stated in that decision, but, based upon additional information provided by the Navy, we find that an additional payment of \$48.20 is due Mr. Fordham.

BACKGROUND

As stated in Nelson P. Fordham, 62 Comp. Gen. 512, the facts involved are:

"Mr. Fordham performed temporary duty in Rota, Spain, in the summer of 1979. His travel orders indicated that both commercial and Government air were authorized and considered advantageous to the Government, and he was issued a commercial round-trip ticket

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for the travel involved. However, while Mr. Fordham was in Rota, he was ordered to proceed to Naples, Italy, to perform additional temporary duty. Before his temporary duty in Naples was completed, the Navy authorized him to travel through Paris for leave purposes on his return from Naples to the United States. This authorization also stated, 'Additional TRS costs, if any, will be borne by Mr. Fordham.' At the completion of his temporary duty in Naples, Mr. Fordham went to the transportation office there to secure transportation back to the United States through Paris as authorized. Because of the added cost involved and the fact that the transportation office could not secure confirmed reservations on U.S. air carriers, Mr. Fordham made his own arrangements for return travel. He traveled by rail to Rome, the nearest large interchange point for airline service. He states that U.S. air carriers could not get him out of Rome on any route back to the United States for 4 or 5 days--apparently the result of an airline strike. Therefore, he took a foreign air carrier from Rome to Paris and after his period of leave, he obtained transportation to the United States by U.S. air carrier. He paid for this transportation with the ticket which had been issued to him for return direct from Rota, Spain.

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** * * If Mr. Fordham had not specifically requested authority to travel through Paris, the transportation office in Naples would have made arrangements for him to travel on a MAC flight between Naples and Philadelphia with commercial connections to Florida. The Commander, Naval Military Personnel Command, who is responsible for making travel arrangements for Naval employees, found that this flight was available for Mr. Fordham. * * *

We held that Military Airlift Command (MAC) full plane charter services is not an available U.S. air carrier under the Fly America Act, and that Mr. Fordham's use of a foreign air carrier was justified in the usual manner using only available commercial flights. However, under applicable regulation reimbursement for return travel was limited to the constructive MAC cost.

Mr. Fordham believes that the reimbursement for his return travel from Naples, Italy, should not have been limited by the constructive cost of Government air transportation provided by MAC, and that he should not have been penalized because he used a foreign air carrier for part of his return travel. In our prior decision we held that the Fly America Act should not result in a penalty to Mr. Fordham in light of the facts presented. We held, however, that in traveling by commercial means he was entitled to reimbursement only of the constructive cost by Government (MAC) transportation.

Government-provided Air Transportation Limitation

Mr. Fordham contends that it is improper to limit his reimbursement to the constructive air transportation furnished by MAC because his amended travel orders specifically authorize his return by commercial air transportation. Travel orders necessarily contain only the minimum amount of information necessary to indicate the particular individual's entitlement under the travel circumstances. It would be impossible to include in them all the restrictions and procedures found in the Joint Travel Regulations (JTR) and implementing service regulations or instructions. Our decision cited the controlling provisions of regulations which limited reimbursement to the cost of MAC transportation. Mr. Fordham has not shown these provisions to be inapplicable.

Specifically 2 JTR para. C5100 provides that an employee who uses commercial transportation instead of a booked seat on a MAC flight will receive no reimbursement. However, if a MAC flight is available but the employee does not have a reserved seat because he has been authorized to return by commercial means reimbursement will be allowed up to the cost that would have been incurred by MAC transportation. As indicated in our prior decision the message

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amending Mr. Fordham's travel authorization to permit him to travel by commercial means and take 5 days' leave in Paris specifically notified him that the additional cost involved in his selected return route would be borne by him. Therefore, that prior decision in this case must be upheld in that it limited reimbursement to MAC constructive cost.

Penalty for Using a Foreign Air Carrier

In the decision of July 6 we held that no Fly America Act penalty was applicable in the circumstances of Mr. Fordham's case and stated that it "appeared" that he had not been penalized for the use of a foreign air carrier. The Navy Accounting and Finance Center has since advised us that he was not paid any part of the cost of travel by foreign aircraft, and that he was not allowed the full comparative cost which would have been paid by the Government had he used the MAC flight.

The information provided shows that the constructive cost to the Government for return transportation if Mr. Fordham had used the MAC flight would have been \$334. However, the total cost paid by the Government was only \$285.80. On the basis of this information it appears that Mr. Fordham was penalized for his use of a foreign air carrier because transportation cost paid included no reimbursement for the foreign air carrier he used between Rome and Paris.

As stated in the decision of July 6th, Mr. Fordham should not be penalized for his use of a foreign air carrier in his peculiar travel circumstances. On the basis of the additional information provided we find that he may be allowed an additional \$48.20. This payment will provide him reimbursement for his costs limited by the constructive cost of MAC aircraft.

for *Harvey R. Van Cleave*
Comptroller General
of the United States