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DECISION



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

FILE: B-216208

DATE: February 27, 1985

MATTER OF: Foreign-Flag Vessels

DIGEST: The Foreign Service Travel Regulations impose "personal financial responsibility" on employees for using a foreign-flag vessel under certain conditions. Since those regulations do not specify the amount of financial responsibility, they may be interpreted as precluding reimbursement of any part of the cost of such travel only if an American-flag vessel is also available. If American-flag vessels are not available, then the regulations are viewed as imposing financial responsibility for such use to the extent that the cost of the foreign-flag vessel exceeds the constructive cost of less than first-class airfare.

The question in this case is whether the Foreign Service Travel Regulations preclude reimbursement when an employee travels on a foreign-flag vessel without obtaining specific authority for such travel as provided in the regulations or whether they allow reimbursement in such circumstances to the extent of the constructive cost of less than first-class airfare.^{1/} Since the language of the applicable regulations does not clearly and unequivocally preclude constructive cost reimbursement in these conditions, reimbursement to the extent of the constructive cost of less than first-class airfare should be allowed.

The Foreign Service Act of 1980 gives the Secretary of State the authority to prescribe regulations for the payment of specified relocation and travel expenses for foreign service officers. Sections 206 and 901, Pub. L. 96-465, October 17, 1980, 94 Stat. 2071, 2079, 2124; 22 U.S.C. §§ 3926, 4081 (1982). The applicable regulations are contained in the Foreign Service Travel Regulations published in the Foreign Affairs Manual (FAM),

^{1/} Robert C. Myers, Chief, Transportation Division, Department of State, submitted this question.

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Volume 6. These regulations cover travel and relocation expenses for foreign service officers and employees of State, AID, and USIA.

Relevant to the question presented 6 FAM, para. 133.2-1 provides:

"A foreign-flag ship may be used only * * *

"a. When the use of air transportation by the traveler would be hazardous or detrimental to his health or well-being and:

"(1) American-flag ships do not operate between the ports servicing the points of origin and destination which are reasonably accessible by adequate surface transportation; or

"(2) American-flag ships do operate but space or service is unavailable and the traveler would be delayed more than 15 days awaiting available American-flag service."

Further, 6 FAM para. 133.4 provides:

"Failure to comply with the provisions of section 133 will subject the employee to personal financial responsibility. * * *"

Obviously, these regulations do not allow employees to use a foreign-flag vessel without qualifying for a special exception. But the financial responsibility paragraph does not indicate the amount of the employee's personal responsibility when he does use a foreign-flag vessel without qualifying for a special exception.

The financial responsibility paragraph has been interpreted as precluding reimbursement of any part of the transportation cost to an employee who travels by a foreign-flag vessel without qualifying for a special exception. However, this interpretation has been questioned in view of the conclusion reached in a memorandum

of instruction from the General Counsel of the General Accounting Office to the Director of the Claims Division, B-194689-O.M., July 20, 1979. In that memorandum the General Counsel did not consider the language of the Foreign Service Travel Regulations, but advised the Director of the Claims Division that when an employee of the United States Information Agency used a foreign-flag vessel he could be reimbursed on a constructive cost basis because no American-flag vessel was available. We find that the financial responsibility paragraph should be interpreted to provide for two different amounts of employee personal responsibility, depending on the circumstances.

The quoted provisions of the Foreign Service Travel Regulations were issued to implement section 901 of the Merchant Marine Act of 1936, 46 U.S.C. § 1241(a) (1982). 6 FAM paras. 133.1 and 181.3. Section 901 precludes the use of a foreign-flag vessel when an American-flag vessel is otherwise available and specifically requires that no reimbursement be allowed for use of a foreign-flag vessel when an American-flag vessel is available. Therefore, the personal financial responsibility provision of 6 FAM para. 133.4 must necessarily be interpreted to preclude reimbursement of any part of the cost of travel by a foreign-flag vessel when an American-flag vessel is also available. However, section 901 does not restrict reimbursement when an American-flag vessel is not available. Thus, any personal responsibility under paragraph 133.4 for the cost of travel by foreign-flag vessel when an American-flag vessel is not available results from the exercise of the Secretary of State's authority to prescribe regulations.

The Secretary generally has not attached any personal financial responsibility for traveling on a vessel. 6 FAM para. 131.1-1. The traveler does not suffer any personal financial responsibility for traveling on a foreign-flag vessel if he qualifies for a special exemption. 6 FAM para. 133.2-1. Although the traveler does suffer an unspecified financial responsibility under 6 FAM para. 133.4 when he does not qualify for a special exemption, there appears to be no reason why that amount should be any greater than the amount specified for indirect travel in 6 FAM para. 131.3-2(a):

"Reimbursement for costs incurred on that portion of the journey which is traveled by indirect route is limited to the total cost of per diem, incidental expenses, and transportation by less than first-class air accommodations (regardless of mode of travel used in indirect travel * * *) which would have been incurred by traveling on a usually traveled route."

When the employee is given a greater degree of personal financial responsibility under the Foreign Service Travel Regulations, that greater degree is ordinarily stated in clear and specific terms. See 6 FAM para. 134.6, entitled "Traveler's Financial Responsibility." We believe the better view is that in the circumstance where an American-flag vessel is not available, reimbursement on a constructive basis should be allowed.

That is consistent with the result reached when the Federal Travel Regulations were applied to an employee's use of a foreign-flag vessel when travel by sea was not authorized. Thomas H. Hamara, B-183310, December 3, 1976.

We are further inclined to this view because we do not think that an employee should be denied reimbursement, at least on a constructive cost basis, for travel performed on official business except when the consequences of the employee's actions are made clear and when there is a substantial reason justifying such drastic action. The Fly America Act, section 1117, Pub. L. 85-726, added by section 5(a), Pub. L. 93-623, January 3, 1975, 88 Stat. 2104, as amended, 49 U.S.C. App § 1517, and section 901 of the Merchant Marine Act deny reimbursement to employees when they use foreign means of transportation when similar American services are available. These, however, are statutory restrictions.

When an employee is not in violation of those Acts and when cost of transportation is reimbursed on a constructive basis and leave is charged for excess travel time, the cost to the Government is not increased. The employee should not be subjected to the further penalty

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of denying reimbursement even on a constructive cost basis unless a substantial Government purpose is served.

Accordingly, when an American-flag vessel is not also available and when the employee does not qualify for a special exemption from foreign-flag vessel travel under the regulations, the cost of his travel on a foreign-flag vessel may be reimbursed under the Foreign Service Travel Regulations to the extent of the constructive cost of less than first-class airfare for comparable travel.

A handwritten signature in cursive script, reading "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name and title.

Acting Comptroller General
of the United States